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FEDERAL RESERVE SYSTEM

12 CFR Part 209

[Regulation I; Docket No. R–1745]

RIN 7100–AG13

Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors (Board) is publishing a final rule that amends Regulation I to automate non-merger-related adjustments to member banks' subscriptions to Federal Reserve Bank (Reserve Bank) capital stock. The final rule also makes certain technical amendments to Regulation I and conforming revisions to the FR 2056 reporting form.

DATES: Effective February 14, 2022.

FOR FURTHER INFORMATION CONTACT: Evan Winerman, Senior Counsel (202–872–7578), Legal Division; or Kimberly Zaikov, Manager (202–452–2256), Reserve Bank Operations and Payments Systems Division. You may also contact us by email via *https://www.federalreserve.gov/apps/ContactUs/feedback.aspx,* choose Staff Group: Regulations.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation I governs the issuance and cancellation of capital stock by the Reserve Banks. Under section 5 of the Federal Reserve Act and Regulation I, a member bank (other than a mutual savings bank) must subscribe to capital stock of the Reserve Bank of its district in an amount equal to 6 percent of the member bank's capital and surplus.[1] Similarly, under section 9 of the Federal Reserve Act and Regulation I, a member bank that is a mutual savings bank must subscribe to capital stock of the Reserve Bank of its district in an amount equal to six-tenths of 1 percent of its total deposit liabilities.[2] The member bank must pay for one-half of this subscription on the date that the Reserve Bank approves its application for capital stock, while the remaining half of the subscription shall be subject to call by the Board.[3]

Under section 7 of the Federal Reserve Act and Regulation I, smaller member banks (currently those with $11.229 billion or less in total consolidated assets) receive a 6 percent annual dividend on their Reserve Bank stock.[4] Other member banks receive a dividend at the lesser of (i) the annual rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividend and (ii) an annual rate of 6 percent.[5]

A. Non-Merger-Related Adjustments to Reserve Bank Stock Subscriptions

Regulation I requires that a member bank apply to adjust its stock subscription ''promptly after filing'' its December 31 report of condition (Call Report).[6] Additionally, a member bank must apply to adjust its stock subscription promptly after filing any other quarterly Call Report showing that the member bank has experienced an increase or decrease to its capital and surplus (or its total deposit liabilities for a mutual savings bank) requiring a change in excess of the lesser of 15 percent or 100 shares of Reserve Bank capital stock.[7] Member banks use the FR 2056 reporting form to apply for adjustments to their stock subscriptions.[8]

B. Merger-Related Adjustments to Reserve Bank Stock Subscriptions

Regulation I provides that, when two member banks merge or consolidate, the appropriate Reserve Banks shall cancel shares of the nonsurviving bank and credit shares to the surviving bank.[9] In order to effectuate this requirement, the Reserve Banks direct surviving member banks to apply to adjust their stock subscriptions before they merge or consolidate with other member banks. Similarly, the Reserve Banks direct nonsurviving member banks to apply to cancel their stock subscriptions before they merge or consolidate with other member banks.[10]

Regulation I does not expressly require that a surviving member bank apply to adjust its stock subscription before it merges or consolidates with a nonmember bank. In practice, however, the Reserve Banks request that surviving member banks apply to adjust their stock subscriptions before they merge or consolidate with nonmember banks.[11] This practice allows the Reserve Banks to make timely changes to the stock subscriptions of surviving member banks that merge or consolidate with nonmember banks.

When a surviving member bank applies to adjust its stock subscription, it must state whether its total consolidated assets exceed $11.229 billion.[12] This requirement ensures that a Reserve Bank receives timely and accurate notice of whether a merger has caused a surviving member bank's total consolidated assets to exceed $11.229 billion, which (as noted above)

[1] 12 U.S.C. 287 and 12 CFR 209.4(a).

[2] 12 U.S.C. 333 and 12 CFR 209.4(b). The Federal Reserve Act and Regulation I allow a mutual savings bank to maintain a temporary ''deposit'' with a Reserve Bank in lieu of obtaining capital stock if the mutual savings bank is not permitted to purchase Reserve Bank stock under state law. However, if the relevant state law is not amended at the first session of the legislature after the bank is admitted to authorize the purchase of Reserve Bank stock, or if the bank fails to purchase the stock within six months of such amendment, the Reserve Bank will terminate the membership of the mutual savings bank. 12 U.S.C. 333; 12 CFR 209.2(a) and 208.3(a)(1).

[3] 12 U.S.C. 287 and 12 CFR 209.4(c)(2).

[4] 12 U.S.C. 289 and 12 CFR 209.4(e). Regulation I generally defines total consolidated assets by reference to the total assets reported on a member bank's most recent December 31 Call Report. 12 CFR 209.1(d)(3).

[5] *Id.*

[6] 12 CFR 209.4(a) and (b).

[7] *Id.*

[8] *See* Federal Reserve, Reporting Forms at *https://www.federalreserve.gov/reportforms/forms/FR_205620200115_f.pdf.*

[9] 12 CFR 209.3(d)(1) and (2). If the surviving or nonsurviving bank is a mutual savings bank that is not permitted to purchase Reserve Bank stock under state law, Regulation I instead directs the Reserve Bank to transfer or increase the member bank's deposit obligation. *Id.*

[10] Nonsurviving member banks use the FR 2086a reporting form to apply to cancel their stock subscriptions. *https://www.federalreserve.gov/reportforms/forms/FR_2086a20200115_f.pdf.*

[11] The surviving bank applies to adjust its stock subscription based on its anticipated post-merger capital and surplus or, in the case of a member bank that is a mutual savings bank, its anticipated post-merger total deposit liabilities.

[12] 12 CFR 209.1(d)(3) and 209.3(d)(3).

determines the dividend rate to which the member bank is entitled.

II. Description of the Final Rule

On April 13, 2021, the Board published a proposal to automate non-merger-related adjustments to member banks' subscriptions to Reserve Bank capital stock.[13] The Board also proposed to clarify that a surviving member bank must apply to adjust its stock subscription before merging or consolidating with another bank. Finally, the Board proposed two technical amendments to Regulation I.

The Board received no responsive comments on the proposal. The Board is finalizing the proposed amendments with certain technical clarifications.

A. Automation of Non-Merger-Related Stock Adjustments

As noted above, Regulation I currently requires that a member bank apply to adjust its stock subscription at least annually and sometimes quarterly. A member bank determines its required stock subscription based on its capital and surplus (or total deposit liabilities for a mutual savings bank) as reported in the member bank's most recent Call Report.

The Reserve Banks have developed software that automatically pulls the information needed to calculate member banks' required stock subscriptions from Call Reports. The Board is therefore amending section 209.4 to automate the stock adjustment process. Specifically, the Reserve Banks will adjust a member bank's stock subscription each time the member bank files a Call Report.[14] This automated process will eliminate the need for member banks to file applications to adjust their stock subscriptions (except in the context of mergers, as described *infra*).

The Board is also clarifying that, when a Reserve Bank issues stock to a member bank, the Reserve Bank will obtain payment for that stock by debit to an account on the Reserve Bank's books or by other form of settlement to which the Reserve Bank agrees.

B. Merger-Related Stock Adjustments

As noted above, before two member banks merge or consolidate, the Reserve Banks direct the surviving member bank to apply to adjust its stock subscription and the nonsurviving member bank to apply to cancel its stock subscription. Similarly, before a member bank merges or consolidates with a nonmember bank, the Reserve Banks request that the surviving member bank apply to adjust its stock subscription.

The Board is amending section 209.3 to codify the Reserve Banks' current practice of requesting pre-merger stock adjustment applications. The amendments will expressly require a surviving member bank to apply to adjust its stock subscription before merging or consolidating with another member bank or nonmember bank.[15] [16] This will ensure that the Reserve Banks make timely changes to the stock subscriptions of surviving member banks that merge or consolidate with other banks.

Relatedly, the Board is making conforming amendments to two provisions of Regulation I (current 12 CFR 209.1(d)(3) and 209.3(d)(3)) to clarify that, consistent with the existing text of Regulation I, a surviving member bank must state in its stock adjustment application whether its total consolidated assets exceed $11.229 billion.

C. Technical Amendments

The Board proposed two technical amendments and is finalizing these amendments with a non-substantive clarification. The Board is also adopting a third, related technical amendment.

Section 209.1(c) recognizes that a bank located in a United States dependency or possession may apply for membership, and a footnote in section 209.1(c) explains that such a bank "should communicate with the Federal Reserve Bank with which it desires to do business." The Board is amending this footnote to clarify that a bank located in the Virgin Islands or Puerto Rico should communicate with the Federal Reserve Bank of New York, while a bank located in Guam, American Samoa, or the Northern Mariana Islands should communicate with the Federal Reserve Bank of San Francisco. The amendment will make this footnote in Regulation I consistent with a provision in the Board's Regulation J that clarifies the Federal Reserve Districts in which banks from United States dependencies and possessions are deemed to be located.[17]

Section 209.3(a) requires that any bank that desires to withdraw from membership in the Federal Reserve System promptly file with its Reserve Bank an application for cancellation of all its Reserve Bank stock. The Board proposed to amend section 209.3(a) to clarify that, consistent with the Board's current understanding, this requirement applies to any national bank that wants to convert into a "State nonmember bank." The final rule clarifies that this requirement applies to a national bank that converts into any nonmember bank—not only a "State" nonmember bank.[18]

Relatedly, section 209.3(c) specifies that when a member bank merges into, consolidates with, or converts into a "State nonmember bank," the member bank's stock shall be cancelled on the effective date of the merger, consolidation, or conversion. The final rule clarifies that a member bank's stock shall be cancelled on the effective date of a member bank's merger into, consolidation with, or conversion into any nonmember bank—not only a State nonmember bank.

IV. Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.,* generally requires that an agency assess the impact a rule is expected to have on small entities.[19] The RFA requires an agency either to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities.

The Board did not receive any comments on its initial regulatory flexibility analysis. The Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities. As described in the information above, the final rule will reduce reporting requirements for member banks by automating non-merger-related stock adjustments. Additionally, the final rule will require that a surviving stockholder apply to adjust its stock subscription

[13] 86 FR 19152 (April 13, 2021).

[14] Similarly, the Board is automating the process for adjusting the deposit obligation of a mutual savings bank that has a deposit with the appropriate Reserve Bank in lieu of Reserve Bank capital stock.

[15] Similarly, if a surviving bank is a mutual savings bank that is not permitted to purchase Reserve Bank stock under state law, the final rule will require the surviving bank to apply to adjust its deposit obligation.

[16] Regulation I expressly requires that a nonsurviving member bank apply to cancel its stock subscription when it "is merged or consolidated into a nonmember bank." 12 CFR 209.3(a). The final rule will expressly require that a nonsurviving member bank apply to cancel its stock subscription (or, in the case of a mutual savings bank that is not permitted to purchase Reserve Bank stock, transfer its deposit obligation) before merging or consolidating with another member bank. This amendment is consistent with the existing requirement in Regulation I that a member bank apply to cancel its stock subscription when it "desires to withdraw from membership" or "voluntarily . . . ceases business." 12 CFR 209.3(a).

[17] *See* 12 CFR 210.2(i)(1)(A).

[18] For example, this requirement applies to a national bank that converts into a federal savings bank.

[19] Under size standards established by the Small Business Administration, banks and other depository institutions are considered "small" if they have less than $600 million in assets. 13 CFR 121.201.

before merging or consolidating with another bank.[20] There are approximately 50 mergers each year in which the surviving stockholder is a member bank, and it will take a surviving stockholder approximately 30 minutes to complete the paperwork associated with an adjustment to its stock subscription. Accordingly, the final rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Certain provisions of the final rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the final rule under the authority delegated to the Board by OMB. The Board did not receive any specific comments on the PRA.

The final rule contains revisions to sections 209.3 and 209.4 that automate non-merger-related adjustments to member banks' subscriptions to Reserve Bank capital stock. Automating the adjustment process would reduce the frequency of reporting. To implement this requirement, the Board has extended for three years, with revision, the Federal Reserve Bank Stock Applications (FR 2030, FR 2030a, FR 2056, FR 2086, FR2086a, 2087; OMB No. 7100–0042). The revisions would affect only the FR 2056.

Adopted Revision, With Extension, of the Following Information Collection

Report title: Federal Reserve Bank Stock Applications.

Agency form numbers: FR 2030; FR 2030a; FR 2056; FR 2086; FR 2086a; FR 2087.

OMB control number: 7100–0042.

Frequency: On occasion.

Respondents: New national banks, non-member state banks converting into national banks, member banks, and member banks converting into or merging into member or nonmember banks.

Estimated number of respondents: FR 2030, 4; FR 2030a, 7; FR 2056, 50; FR 2086, 10; FR 2086a, 86; FR 2087, 1.

Estimated average hours per response: 0.5.

Estimated annual burden hours: FR 2030, 2; FR 2030a, 3.5; FR 2056, 25; FR 2086, 5; FR 2086a, 43; FR 2087, 0.5.

General description of report: Any national bank wanting to purchase stock in the Federal Reserve System, any member bank wanting to increase or decrease its Federal Reserve Bank stock holdings, or any bank wanting to cancel its stock holdings must file an application with the appropriate Federal Reserve Bank. The application forms for the initial subscription of Federal Reserve Bank stock filed by organizing national banks and nonmember state banks converting to national banks (FR 2030 and 2030a, respectively) and the application forms for the cancellation of Federal Reserve Bank stock filed by liquidating member banks, member banks merging or consolidating with nonmember banks, and insolvent member banks (FR 2086, FR 2086a, and FR 2087, respectively) require one or more of the following: A resolution by the applying bank's board of directors authorizing the transaction, an indication of the capital and surplus of the bank as of the date of application, a certification (by official signatures) of the resolution, and/or an indication of the number of shares and dollar amount of the Federal Reserve Bank stock to be purchased or cancelled.

The application form for an interim adjustment in a member bank's holdings of Federal Reserve Bank stock (FR 2056) requires an indication of the capital and surplus of the bank (or total deposit liabilities for a mutual savings bank) as of the date of application and an indication of the number of shares held and the number of shares to be acquired or canceled. A member bank must submit a completed FR 2056 form to correct a discrepancy between the amount of Federal Reserve Bank stock required to be held and the amount actually held by the member bank. The latter is determined through information that the member bank reports quarterly on the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100–0036).

Legal authorization and confidentiality: The Federal Reserve Bank Stock Applications are authorized pursuant to sections 9 and 11(a) of the FRA (12 U.S.C. 321 and 248(a)). Additionally, the FR 2030 and FR 2030a are specifically authorized by section 2 of the FRA (12 U.S.C. 222 and 282), the FR 2056, FR 2086, and FR 2086a are authorized by section 5 of the FRA (12 U.S.C. 287), and the FR 2087 is authorized by section 6 of the FRA (12 U.S.C. 288). The FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087 are mandatory.

Individual respondents may request that information submitted to the Board in these applications be kept confidential on a case-by-case basis. Such applications may contain information related the business plans of the respondent. Under certain circumstances, this information may be withheld under exemption 4 of the Freedom of Information Act (FOIA), which protects privileged or confidential commercial or financial information (5 U.S.C. 552(b)(4)). These applications may also contain information of a personal nature the disclosure of which would result in a clearly unwarranted invasion of personal privacy, which may be protected under exemption 6 of the FOIA (5 U.S.C. 552(b)(6)). Additionally, exemption 8 of the FOIA (5 U.S.C. 552(b)(8)) may apply to the extent the reported information is contained in or related to examination reports.

Current actions: The Board has adopted amendments to Regulation I that automate non-merger-related adjustments to member banks' subscriptions to Reserve Bank capital stock.

Regulation I currently requires that a member bank apply to adjust its stock subscription at least annually and sometimes quarterly. A member bank determines its required stock subscription based on its capital and surplus (or total deposit liabilities for a mutual savings bank) as reported in the member bank's most recent Call Report.

The Reserve Banks have developed software that automatically pulls the information needed to calculate member banks' required stock subscriptions from Call Reports. Accordingly, the Board adopted amendments to section 209.4 that will automate non-merger-related stock adjustments. The Board also adopted amendments to section 209.3(d) that would require a surviving stockholder to apply to adjust its stock subscription before merging with another bank.

[20] Consistent with the current text of Regulation I, a surviving member bank would need to report in its stock adjustment application whether its total consolidated assets exceed $11.229 billion. *See* n. 12, *supra.* Additionally, consistent with the current text of Regulation I, a nonsurviving member bank would need to apply to cancel its stock before merging or consolidating with another bank. *See* n. 15, *supra.*

Consistent with these changes to Regulation I, the Board eliminated the requirement that member banks routinely submit FR 2056 reporting forms to adjust their stock subscriptions. The Board amended the FR 2056 reporting form to clarify that the form should be filed only by a surviving member bank that merges or consolidates with another bank.

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board will amend Regulation I, 12 CFR part 209, as follows:

PART 209—FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 12 U.S.C. 222, 248, 282, 286–288, 289, 321, 323, 327–328, and 466.

■ 2. Revise the heading to part 209 to read as shown above.

■ 3. Amend § 209.1 by revising paragraphs (c) and (d)(3) to read as follows.

§ 209.1 Authority, purpose, scope, and definitions.

* * * * *

(c) *Scope.* This part applies to member banks of the Federal Reserve System, to national banks in process of organization, and to state banks applying for membership. National banks and locally-incorporated banks located in United States dependencies and possessions are eligible (with the consent of the Board) but not required to apply for membership under section 19(h) of the Federal Reserve Act, 12 U.S.C. 466.[1]

[1] A bank located in the Virgin Islands or Puerto Rico should communicate with the Federal Reserve Bank of New York regarding applications for membership under the provisions of section 19(h) of the Federal Reserve Act. A bank located in Guam, American Samoa, or the Northern Mariana Islands should communicate with the Federal Reserve Bank of San Francisco regarding applications for membership under the provisions of section 19(h) of the Federal Reserve Act.

(d) * * *

(3) *Total consolidated assets* means the total assets on the stockholder's balance sheet as reported by the stockholder on its Consolidated Report of Condition and Income (Call Report) as of the most recent December 31, except in the case of:

(i) A new member ''total consolidated assets'' means (until the next December 31 Call Report becomes available) the total consolidated assets of the new member at the time of its application for capital stock; and

(ii) A surviving stockholder after a merger ''total consolidated assets'' means (until the next December 31 Call Report becomes available) the total consolidated assets reported by that stockholder pursuant to § 209.3(d)(5).

■ 4. Amend § 209.3 by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a) and (c) and the paragraph (d) subject heading;

■ c. Redesignating paragraphs (d)(1), (2), and (3) as paragraphs (d)(2), (3), and (5), respectively and adding new paragraph (d)(1) and paragraph (d)(4); and

■ d. Revising newly redesignated paragraph (d)(5).

The revisions and additions to read as follows:

§ 209.3 Cancellation of Reserve Bank stock; mergers involving member banks.

(a) *Application for cancellation.* Any bank that desires to withdraw from membership in the Federal Reserve System (including a national bank that wants to convert into a nonmember bank), voluntarily liquidates or ceases business, is merged or consolidated into a nonmember bank, or is involuntarily liquidated by a receiver or conservator or otherwise, shall promptly file with its Reserve Bank an application for cancellation of all its Reserve Bank stock (or withdrawal of its deposit, as the case may be) and payment therefor in accordance with § 209.4.

* * * * *

(c) *Effective date of cancellation.* Cancellation in whole of a bank's Reserve Bank capital stock shall be effective, in the case of:

(1) Voluntary withdrawal from membership by a state bank, as of the date of such withdrawal;

(2) Merger into, consolidation with, or (for a national bank) conversion into, a nonmember bank, as of the effective date of the merger, consolidation, or conversion; and

(3) Involuntary termination of membership, as of the date the Board issues the order of termination.

(d) *Exchange of stock on merger or change in location; stock adjustment upon merger with a nonmember bank; reporting of total consolidated assets following merger*—(1) *Applications.* (i) Before a merger or consolidation of member banks, the nonsurviving member bank shall file an application with the appropriate Reserve Bank to cancel its shares of Reserve Bank stock (or in the case of a mutual savings bank not authorized to purchase Reserve Bank stock, shall file an application to transfer its deposit to the account of the surviving bank) and the surviving member bank shall file an application with the appropriate Reserve Bank for issue of a corresponding number of shares of Reserve Bank stock (or in the case of a mutual savings bank not authorized to purchase Reserve Bank stock, shall file an application to increase its deposit obligation).

(ii) Before a merger or consolidation of a member bank and a nonmember bank, a surviving member bank shall file an application with the appropriate Reserve Bank to adjust its Reserve Bank capital stock subscription to equal six percent of the member bank's anticipated post-merger capital and surplus, or, in the case of member bank that is a mutual savings bank, six-tenths of 1 percent of the member bank's anticipated post-merger total deposit liabilities. A mutual savings bank not authorized to purchase Reserve Bank stock shall file an application to adjust its deposit obligation in a like manner.

* * * * *

(4) *Merger with a nonmember bank.* Upon a merger or consolidation of a member bank and a nonmember bank, the Reserve Bank will adjust the surviving member bank's stock subscription to equal six percent of the member bank's capital and surplus, or, in the case of a member bank that is a mutual savings bank, six-tenths of 1 percent of the member bank's total deposit liabilities. If a mutual savings bank has a deposit with the appropriate Reserve Bank in lieu of Reserve Bank capital stock, its deposit obligation shall be adjusted in a like manner.

(5) *Statement of total consolidated assets.* When a member bank merges or consolidates with another bank and the surviving bank remains a Reserve Bank stockholder, the surviving stockholder must report whether its total consolidated assets exceed $11,229,000,000 in the application described in paragraph (d)(1) of this section.

* * * * *

■ 5. Amend § 209.4 by:

■ a. Revising paragraphs (a) and (b) and paragraph (c)(1) introductory text;

■ b. Redesignating paragraphs (c)(2) and (3) as paragraphs (c)(3) and (4), and adding a new paragraph (c)(2); and

■ c. Revising paragraph (d)(1) introductory text.

The revisions and addition read as follows:

§ 209.4 Amounts and payments for subscriptions and cancellations; timing and rate of dividends.

(a) *Amount of subscription.* The total subscription of a member bank (other than a mutual savings bank) shall equal six percent of its capital and surplus as shown on its most recent Call Report. After a member bank files a Call Report, the appropriate Reserve Bank will adjust the member bank's Reserve Bank capital stock subscription to equal six percent of the member bank's capital and surplus.

(b) *Mutual savings banks.* The total subscription of a member bank that is a mutual savings bank shall equal six-tenths of 1 percent of its total deposit liabilities as shown on its most recent Call Report. After a member bank that is a mutual savings bank files a Call Report, the appropriate Reserve Bank will adjust the member bank's Reserve Bank capital stock subscription to equal six-tenths of 1 percent of the member bank's total deposit liabilities. If a mutual savings bank has a deposit with the appropriate Reserve Bank in lieu of Reserve Bank capital stock, its deposit obligation shall be adjusted in a like manner.

(c) * * *

(1) When a Reserve Bank issues capital stock to a member bank (or accepts a deposit in lieu thereof), the member bank shall pay the Reserve Bank—

* * * * *

(2) A Reserve Bank shall obtain settlement for the payment described in paragraph (c)(1) of this section by debit to an account on the Reserve Bank's books or other form of settlement to which the Reserve Bank agrees.

* * * * *

(d) * * *

(1) When a Reserve Bank cancels Reserve Bank capital stock of a member bank, or (in the case of involuntary termination of membership) upon the effective date of cancellation specified in § 209.3(c)(3), the Reserve Bank shall—

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–00503 Filed 1–12–22; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1411

RIN 3055–AA18

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit System Insurance Corporation (FCSIC) may impose under the Farm Credit Act of 1971, as amended. These adjustments are required by 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990.

DATES: *Effective date:* This regulation is effective on January 13, 2022. *Applicability date:* The adjusted amounts of civil money penalties in this rule are applicable to penalties assessed on or after January 15, 2022, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lynn M. Powalski, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TTY (703) 883–4390.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) [1] to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act provides for the regular evaluation of CMPs and requires FCSIC, and every other Federal agency with authority to impose CMPs, to ensure that CMPs continue to maintain their deterrent values.[2]

FCSIC must enact regulations that annually adjust its CMPs pursuant to the inflation adjustment formula of the amended Inflation Adjustment Act and rounded using a method prescribed by the Inflation Adjustment Act. The new amounts are applicable to penalties assessed on or after January 15, 2022, for conduct occurring on or after November 2, 2015. Agencies do not have discretion in choosing whether to adjust a CMP, by how much to adjust a CMP, or the methods used to determine the adjustment.

II. CMPs Imposed Pursuant to Section 5.65 of the Farm Credit Act

First, section 5.65(c) of the Farm Credit Act, as amended (Act), provides that any insured Farm Credit System bank that willfully fails or refuses to file any certified statement or pay any required premium shall be subject to a penalty of not more than $100 for each day that such violations continue, which penalty FCSIC may recover for its use.[3] Second, section 5.65(d) of the Act provides that, except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any System institution.[4] For each willful violation of section 5.65(d), the institution involved shall be subject to a penalty of not more than $100 for each day during which the violation continues, which FCSIC may recover for its use.

FCSIC's current § 1411.1 provides that FCSIC can impose a maximum penalty of $217 per day for a violation under section 5.65(c) and (d) of the Act.

III. Required Adjustments

The 2015 Act requires agencies to make annual adjustments for inflation. Annual inflation adjustments are based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year's October CPI–U. Based on the CPI–U for October 2021, not seasonally adjusted, the cost-of-living adjustment multiplier for 2022 is 1.06222.[5] Multiplying 1.06222 times the current penalty amount of $217, after rounding to the nearest dollar as required by the

[1] Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990), as amended by Public Law 104–134, title III, § 31001(s)(1), 110 Stat. 1321–373 (Apr. 26, 1996); Public Law 105–362, title XIII, § 1301(a), 112 Stat. 3293 (Nov. 10, 1998); Public Law 114–74, title VII, § 701(b), 129 Stat. 599 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

[2] Under the amended Inflation Adjustment Act, a CMP is defined as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. All three requirements must be met for a fine to be considered a CMP.

[3] 12 U.S.C. 2277a–14(c).

[4] 12 U.S.C. 2277a–14(d).

[5] *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M–22–07, *Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 15, 2021).

2015 Act, results in a new penalty amount of $231.

IV. Notice and Comment Not Required by Administrative Procedure Act

In accordance with the 2015 Act, Federal agencies shall adjust civil monetary penalties ''notwithstanding'' Section 553 of the Administrative Procedures Act. This means that public procedure generally required for agency rulemaking—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.

List of Subjects in 12 CFR Part 1411

Banks, Banking, Civil money penalties, Penalties.

For the reasons stated in the preamble, part 1411 of chapter XIV, title 12 of the Code of Federal Regulations is amended as follows:

PART 1411—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1411 continues to read as follows:

Authority: Secs. 5.58(10), 5.65(c) and (d) of the Farm Credit Act (12 U.S.C. 2277a–7(10), 2277a–14(c) and (d)); 28 U.S.C. 2461 note.

■ 2. Revise § 1411.1 to read as follows:

§ 1411.1 Inflation adjustment of civil money penalties for failure to file a certified statement, pay any premium required or obtain approval before employment of persons convicted of criminal offenses.

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, a civil money penalty imposed pursuant to section 5.65(c) or (d) of the Farm Credit Act of 1971, as amended, shall not exceed $231 per day for each day the violation continues.

Dated: January 10, 2022.

Ashley Waldron,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2022–00577 Filed 1–12–22; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0820; Airspace Docket No. 21–ASO–29]

RIN 2120–AA66

Amendment of Class E Airspace; Covington, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Covington Municipal Airport, Covington, GA. This action is the result of an airspace review caused by the decommissioning of the ALCOVY Non-directional Beacon (NDB) and cancellation of the associated approaches. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

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/.* 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* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 57083, October 14, 2021) for Docket No. FAA–2021–0820 to amend Class E airspace extending upward from 700 feet above the surface at Covington Municipal Airport, Covington, GA.

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 7400.11F.

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 routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface at Covington Municipal Airport, Covington, GA, as the ACOVY NDB is being decommissioned.

The Class E airspace extending upward from 700 feet above the surface is amended by increasing the radius from 6.3 miles to 6.5 miles, and eliminating the extension to the east. This action also updates geographic coordinates of the airport to coincide with the FAA database.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures an air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts and no extraordinary circumstances 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 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 GA E5 Covington, GA [Amended]

Covington Municipal Airport, GA
(Lat. 33°37′56″ N, long. 83°50′48″ W)

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

Issued in College Park, Georgia, on January 3, 2022.

Earl Newalu,

Manager, Tactical Operations, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–00071 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038–AF10

Annual Adjustment of Civil Monetary Penalties to Reflect Inflation—2022

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending Rule 143.8, its rule that governs the maximum amount of civil monetary penalties imposed under the Commodity Exchange Act (CEA), to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the CEA and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: This rule is effective on January 13, 2022 and is applicable to penalties assessed after January 15, 2022.

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418–5327 or *ericcobene@cftc.gov,* Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) [1] requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amount of CMPs provided by law within the jurisdiction of that agency.[2] A 2015 amendment to the FCPIAA [3] required agencies to make an initial ''catch-up'' adjustment to its civil monetary penalties effective no later than August 1, 2016.[4] For every year thereafter effective not later than January 15th, the FCPIAA, as amended, requires agencies to make annual adjustments for inflation, with guidance from the Director of the Office of Management and Budget.[5]

II. Commodity Exchange Act Civil Monetary Penalties

The following sections of the CEA provide for CMPs that meet the FCPIAA definition [6] and these CMPs are, therefore, subject to the inflation adjustment: Sections 6(c), 6b, and 6c of the CEA.[7]

III. Annual Inflation Adjustment for Commodity Exchange Act Civil Monetary Penalties

A. Methodology

The FCPIAA annual inflation adjustment, in the context of the CFTC's CMPs, is determined by increasing the maximum penalty by a ''cost-of-living

[1] The FCPIAA, Public Law 101–410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the FCPIAA is to establish a mechanism that shall (1) allow for regular adjustment for inflation of civil monetary penalties; (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improve the collection by the Federal Government of civil monetary penalties.

[2] For the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

[3] Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 129 Stat. 584 (2015) (2015 Act), title VII, Section 701.

[4] FCPIAA Sections 4 and 5. See also, Adjustment of Civil Monetary Penalties for Inflation, 81 FR 41435 (June 27, 2016).

[5] FCPIAA Sections 4 and 5. See also, Executive Office of the President, Office of Management and Budget Memorandum, M–22–07, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2021) (2021 OMB Guidance) (*https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf*).

[6] FCPIAA Section 3(2).

[7] 7 U.S.C. 9, 13a–1, 13b. Criminal authorities may also seek fines for criminal violations of the CEA (see 7 U.S.C. 13, 13(c), 13(d), 13(e), and 13b). The FCPIA does not affect the amounts of these criminal penalties.

adjustment'', rounded to the nearest multiple of one dollar.[8] Annual inflation adjustments are based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year's October CPI–U.[9] In this case, the October 2021 CPI–U (276.589)/October 2020 CPI–U (260.388) = 1.06222.[10] In order to complete the 2022 annual adjustment, the CFTC must multiply each of its most recent CMP amounts by the multiplier, 1.06222, and round to the nearest dollar.[11]

B. Civil Monetary Penalty Adjustments

Applying the FCPIAA annual inflation adjustment methodology results in the following amended CMPs:

U.S. Code citation	Civil monetary penalty description		Violations occurring on or after 11/02/2015		
			Penalty amount in 2021 Final Rule [1]	CPI–U multiplier	New adjusted penalty amount
Civil Monetary Penalty Imposed by the Commission in an Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity [2].	Non-Manipulation or Attempted Manipulation.	$170,129	1.06222	$180,714
	For any person other than a registered entity [2].	Manipulation or Attempted Manipulation.	1,227,202	1.06222	1,303,559
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity [2] or any of its directors, officers or employees.	Non-Manipulation or Attempted Manipulation.	937,161	1.06222	995,471
	For a registered entity [2] or any of its directors, officers or employees.	Manipulation or Attempted Manipulation.	1,227,202	1.06222	1,303,559
Civil Monetary Penalty Imposed by a Federal District Court in a Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person	Non-Manipulation or Attempted Manipulation.	187,432	1.06222	199,094
	Any Person	Manipulation or Attempted Manipulation.	1,227,202	1.06222	1,303,559

[1] Annual Adjustment of Civil Monetary Penalties to Reflect Inflation—2021, 86 FR 7802 (Feb. 2, 2021).
[2] The term ''Registered Entity'' is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

The FCPIAA provides that any increase under the FCPIAA in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.[12] Thus, the new CMP amounts established by this rulemaking shall apply to penalties assessed after January 15, 2022, for violations that occurred on or after November 2, 2015, the effective date of the FCPIAA amendment requiring annual adjustments, the 2015 Act.

IV. Administrative Compliance

A. Notice Requirement

The FCPIAA specifically exempted from the Administrative Procedure Act (APA) the rulemakings required to implement annual inflation adjustments.[13] This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.[14] The Commission further notes that the notice and comment procedures of the APA do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language that mandates that the Commission act in a nondiscretionary matter.[15]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act [16] requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rule(s) for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law.[17] Because, as discussed above, the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to Rule 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),[18] which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

D. Consideration of Costs and Benefits

Section 15(a) of the CEA [19] requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory

[8] FCPIAA Sections 4 and 5.

[9] FCPIAA Section 5(b)(1).

[10] The CPI–U is published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the internet. To access this information, go to the Consumer Price Index Home Page at: *http://www.bls.gov/cpi/*. Click the ''CPI Data/Databases'' heading, and select ''All Urban Consumers (Current Series)'', ''Top Picks.'' Then check the box for ''U.S. city average, All items—CUUR0000SA0'', and click the ''Retrieve data'' button.

[11] FCPIAA Section 5(a). See also, 2021 OMB Guidance at 3.

[12] FCPIAA Section 6.

[13] FCPIAA Section 4(b)(2).

[14] 2021 OMB Guidance at 3–4.

[15] *Lake Carriers' Ass'n* v. *E.P.A.,* 652 F.3d 1, 10 (D.C. Cir. 2011).

[16] 5 U.S.C. 601–612.

[17] 5 U.S.C. 603(a).

[18] 44 U.S.C. 3507(d).

[19] 7 U.S.C. 19(a).

provisions by which it is making cost-of-living adjustments to the CMPs in Rule 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in Section 15(a) of the CEA, or any other factors.

List of Subjects in 17 CFR Part 143

Claims, Penalties.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

■ 1. The authority citation for part 143 continues to read as follows:

Authority: 7 U.S.C. 9, 9a, 12a(5), 13a, 13a–1(d), 13(a), 13b; 31 U.S.C. 3701–3720E; 28 U.S.C. 2461 note.

■ 2. Amend § 143.8 by revising paragraph (b) to read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

* * * * *

(b) *2022 Inflation adjustment.* The maximum amount of each civil monetary penalty in the following charts applies to penalties assessed after January 15, 2022:

(1) For Non-Manipulation or Attempted Manipulation Violations:

TABLE 1 TO PARAGRAPH (b)(1)

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty			
		10/23/2004 through 10/22/2008	10/23/2008 through 10/22/2012	10/23/2012 through 11/01/2015	11/02/2015 to present
Civil Monetary Penalty Imposed by the Commission in an Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity [1].	$130,000	$130,000	$140,000	$180,714
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity [1] or any of its directors, officers or employees.	625,000	675,000	700,000	995,471
Civil Monetary Penalty Imposed by a Federal District Court in a Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person	130,000	140,000	140,000	199,094

[1] The term "Registered Entity" is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

(2) For Manipulation or Attempted Manipulation Violations:

TABLE 2 TO PARAGRAPH (b)(2)

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty			
		10/23/2004 through 05/21/2008	05/22/2008 through 08/14/2011	08/15/2011 through 11/01/2015	11/02/2015 to Present
Civil Monetary Penalty Imposed by the Commission in an Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity [1].	$130,000	$1,000,000	$1,025,000	$1,303,559
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity [1] or any of its directors, officers or employees.	625,000	1,000,000	1,025,000	1,303,559
Civil Monetary Penalty Imposed by a Federal District Court in a Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person	130,000	1,000,000	1,025,000	1,303,559

[1] The term "Registered Entity" is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

Issued in Washington, DC, on January 10, 2022, by the Commission.

Robert Sidman

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Adjustment of Civil Monetary Penalties for Inflation—2022—Commission Voting Summary

On this matter, Chairman Behnam and Commissioner Stump voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2022–00595 Filed 1–12–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 250 and 385

[Docket No. RM22–6–000; Order No. 882]

Civil Monetary Penalty Inflation Adjustments

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this final rule.

DATES: This final rule is effective January 13, 2022.

FOR FURTHER INFORMATION CONTACT: Todd Hettenbach, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Phone: (202) 502–8794, email: *Todd.Hettenbach@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. In this final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

I. Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),[1] which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),[2] required the head of each Federal agency to issue a rule by July 2016 adjusting for inflation each ''civil monetary penalty'' provided by law within the agency's jurisdiction and to make further inflation adjustments on an annual basis every January 15 thereafter.[3]

II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) Is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.[4] This definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),[5] the Natural Gas Act (NGA),[6] the Natural Gas Policy Act of 1978 (NGPA),[7] and the Interstate Commerce Act (ICA).[8]

4. Under the 2015 Adjustment Act, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI–U) for October of the preceding year exceeds the CPI–U for October of the year before that.[9] The CPI–U for October 2021 exceeded the CPI–U for October 2020 by 6.222%.[10] 5. The second step requires multiplying the CPI–U percentage increase by the applicable existing maximum civil monetary penalty.[11] This step results in a base penalty increase amount.

6. The third step requires rounding the base penalty increase amount to the nearest dollar and adding that amount to the base penalty to calculate the new adjusted maximum civil monetary penalty.[12]

7. Under the 2015 Adjustment Act, an agency is directed to use the maximum civil monetary penalty applicable at the time of assessment of a civil penalty, regardless of the date on which the violation occurred.[13]

8. The adjustments that the Commission is required to make pursuant to the 2015 Adjustment Act are reflected in the following table:

Source	Existing maximum civil monetary penalty	New adjusted maximum civil monetary penalty
16 U.S.C. 825o–1(b), Sec. 316A of the Federal Power Act	$1,307,164 per violation, per day	$1,388,496 per violation, per day.
16 U.S.C. 823b(c), Sec. 31(c) of the Federal Power Act	$23,607 per violation, per day	$25,075 per violation, per day.
16 U.S.C. 825n(a), Sec. 315(a) of the Federal Power Act	$3,083 per violation	$3,275 per violation.
15 U.S.C. 717t–1, Sec. 22 of the Natural Gas Act	$1,307,164 per violation, per day	$1,388,496 per violation, per day.
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504(b)(6)(A)(i) of the Natural Gas Policy Act of 1978.	$1,307,164 per violation, per day	$1,388,496 per violation, per day.
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act.	$1,368 per offense and $69 per day after the first day.	$1,453 per offense and $73 per day after the first day.
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act.	$13,685 per violation, per day	$14,536 per violation, per day.
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act.	$1,368 per offense, per day	$1,453 per offense, per day.
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act.	$1,368 per offense, per day	$1,453 per offense, per day.

III. Administrative Findings

9. Congress directed that agencies issue final rules to adjust their maximum civil monetary penalties notwithstanding the requirements of the Administrative Procedure Act (APA).[14] Because the Commission is required by law to undertake these inflation adjustments notwithstanding the notice and comment requirements that otherwise would apply pursuant to the

[1] Public Law 114–74, Sec. 701, 129 Stat. 584, 599.

[2] Public Law 101–410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

[3] 28 U.S.C. 2461 note, at (4). The Commission made its January 2021 adjustment on January 8, 2021, in Docket No. RM21–8–000. *See Civil Monetary Penalty Inflation Adjustments,* Order No. 875, 86 FR 8131 (Feb. 4, 2021), 174 FERC ¶ 61,015 (2021).

[4] 28 U.S.C. 2461 note at (3).

[5] 16 U.S.C. 791a *et seq.*

[6] 15 U.S.C. 717 *et seq.*

[7] 15 U.S.C. 3301 *et seq.*

[8] 49 App. U.S.C. 1 *et seq.*

[9] 28 U.S.C. 2461 note at (5)(b)(1).

[10] *See, e.g.,* Memorandum from Shalanda D. Young, Office of Management and Budget, Implementation of the Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2021).

[11] 28 U.S.C. 2461 note at (5)(a).

[12] *Id.* at (6).

[13] *Id.* at (6).

[14] *Id.* at (3)(b)(2).

APA, and because the Commission lacks discretion with respect to the method and amount of the adjustments, prior notice and comment would be impractical, unnecessary, and contrary to the public interest.

IV. Regulatory Flexibility Statement

10. The Regulatory Flexibility Act, as amended, requires agencies to certify that rules promulgated under their authority will not have a significant economic impact on a substantial number of small businesses.[15] The requirements of the Regulatory Flexibility Act apply only to rules promulgated following notice and comment.[16] The requirements of the Regulatory Flexibility Act do not apply to this rulemaking because the Commission is issuing this final rule without notice and comment.

V. Paperwork Reduction Act

11. This rule does not require the collection of information. The Commission is therefore not required to submit this rule for review to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.[17]

VI. Document Availability

12. 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 print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

13. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

14. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659, *public.referenceroom@ferc.gov.*

[15] 5 U.S.C. 601 *et seq.*

[16] 5 U.S.C. 603, 604.

[17] 44 U.S.C. 3507(d).

VII. Effective Date and Congressional Notification

15. For the same reasons the Commission has determined that public notice and comment are unnecessary, impractical, and contrary to the public interest, the Commission finds good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the APA,[18] and therefore, the regulation is effective upon publication in the **Federal Register**.

16. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

List of Subjects

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Issued: January 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 250 and 385, chapter I, title 18, *Code of Federal Regulations* as follows:

PART 250—FORMS

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 28 U.S.C. 2461 note.

■ 2. Revise § 250.16(e)(1) to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

* * * * *

(e) * * *

(1) Any person who transports gas for others pursuant to subpart B or G of part 284 of this chapter and who knowingly violates the requirements of §§ 358.4 and 358.5 of this chapter, this section, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $1,388,496 for any one violation.

* * * * *

[18] 5 U.S.C. 553(d)(3).

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 4. Revise § 385.1504(a) to read as follows:

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to $25,075 for each day that the violation continues.

* * * * *

■ 5. Revise § 385.1602 to read as follows:

§ 385.1602 Civil penalties, as adjusted (Rule 1602).

The current inflation-adjusted civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) *15 U.S.C. 3414(b)(6)(A)(i), Natural Gas Policy Act of 1978:* $1,388,496.

(b) *16 U.S.C. 823b(c), Federal Power Act:* $25,075 per day.

(c) *16 U.S.C. 825n(a), Federal Power Act:* $3,275.

(d) *16 U.S.C. 825o–1(b), Federal Power Act:* $1,388,496 per day.

(e) *15 U.S.C. 717t–1, Natural Gas Act:* $1,388,496 per day.

(f) *49 App. U.S.C. 6(10) (1988), Interstate Commerce Act:* $1,453 per offense and $73 per day after the first day.

(g) *49 App. U.S.C. 16(8) (1988), Interstate Commerce Act:* $14,536 per day.

(h) *49 App. U.S.C. 19a(k) (1988), Interstate Commerce Act:* $1,453 per day.

(i) *49 App. U.S.C. 20(7)(a) (1988), Interstate Commerce Act:* $1,453 per day.

[FR Doc. 2022–00616 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 169

[Docket No. FDA–2020–N–1807]

RIN 0910–AI16

French Dressing; Revocation of a Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is revoking the standard of identity for French dressing. This action, in part, responds to a citizen petition submitted by the Association for Dressings and Sauces (ADS). We conclude that this standard no longer promotes honesty and fair dealing in the interest of consumers. Revocation of the standard of identity for French dressing will provide greater flexibility in the product's manufacture, consistent with comparable, nonstandardized foods available in the marketplace.

DATES: This final rule is effective on February 14, 2022.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule 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: Rumana Yasmeen, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371, or Carrol Bascus, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Final Rule

The final rule revokes the standard of identity for French dressing. This action, in part, responds to a citizen petition submitted by the ADS. We conclude that the standard of identity for French dressing no longer promotes honesty and fair dealing in the interest of consumers and revoking the standard could provide greater flexibility in the product's manufacture, consistent with comparable, nonstandardized foods available in the marketplace.

B. Summary of the Major Provision of the Final Rule

The final rule revokes the standard of identity for French dressing.

C. Legal Authority

We are issuing the final rule to revoke the standard of identity for French dressing consistent with our authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act), which directs the Secretary of Health and Human Services (Secretary) to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers.

D. Costs and Benefits

The final rule affects manufacturers of dressings for salad and does not require any of the affected firms within the industry to change their manufacturing practices.

Our analysis of current food manufacturing practices and the petition to revoke the standard indicate that revoking the standard of identity could provide benefits in terms of additional flexibility and the opportunity for innovation to manufacturers. The potential for innovation is evidenced by the growing variety of dressings for salads on the market that are formulated to meet consumers' preferences and needs.

Therefore, we conclude that the final rule to revoke the standard of identity for French dressing would provide social benefits at no cost to the respective industries.

II. Background

A. Need for the Regulation/History of This Rulemaking

Section 401 of the FD&C Act (21 U.S.C. 341) directs the Secretary to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers. The purpose of these standards is to protect consumers against economic adulteration and reflect consumers' expectations about food.

In the **Federal Register** of August 12, 1950 (15 FR 5227), we established a standard of identity for French dressing. We later amended that standard of identity in the **Federal Registers** of May 10, 1961 (26 FR 4012), February 12, 1964 (29 FR 2382), February 1, 1967 (32 FR 1127 at 1128), May 18, 1971 (36 FR 9010), and November 8, 1974 (39 FR 39554), to allow the use of certain ingredients in French dressing. We also re-designated the French dressing standard of identity as § 169.115 (21 CFR 169.115) (42 FR 14481, March 15, 1977).

We received a citizen petition from the ADS asking us, in part, to revoke the standard of identity for French dressing (citizen petition from the ADS, dated January 13, 1998, submitted to the Division of Dockets Management, Food and Drug Administration, Docket No. FDA–1998–P–0669 (''petition'')). As a partial response to the petitioner's request, we issued a proposed rule in the **Federal Register** of December 21, 2020 (85 FR 82980), that would revoke the standard of identity for French dressing.

The petition asked us to revoke the standard of identity for French dressing (petition at page 1). The petition stated that there has been a proliferation of nonstandardized pourable dressings for salads with respect to flavors (Italian, Ranch, cheese, fruit, peppercorn, varied vinegars, and other flavoring concepts) and composition (including a wide range of reduced fat, ''light,'' and fat-free dressings) (petition at page 3). The French dressing standard of identity, according to the petition, no longer serves as a benchmark for other dressings because of the wide variation in composition to meet consumer interests (id.). Instead, the petition claimed that the standard of identity has become marginalized and restricts innovation (id.). Therefore, the petition

stated that the French dressing standard of identity no longer promotes honesty and fair dealing in the interest of consumers (id.).

We reviewed the petition and tentatively concluded that the standard of identity for French dressing no longer promotes honesty and fair dealing in the interest of consumers. Therefore, we proposed to revoke the French dressing standard of identity at § 169.115.

When the standard of identity was established in 1950, French dressing was one of three types of dressings we identified (15 FR 5227). We generally characterized the dressings as containing a fat ingredient, an acidifying ingredient, and seasoning ingredients.

The French dressing standard allowed for certain flexibility in manufacturers' choice of oil, acidifying ingredients, and seasoning ingredients. Tomatoes or tomato-derived ingredients were among the seasoning ingredients permitted, but not required. Amendments to the standard since 1950 have permitted the use of additional ingredients, such as any safe and suitable color additives that impart the color traditionally expected (39 FR 39543 at 39554–39555).

Most, if not all, products currently sold under the name ''French dressing'' contain tomatoes or tomato-derived ingredients and have a characteristic red or reddish-orange color. They also tend to have a sweet taste. Consumers appear to expect these characteristics when purchasing products represented as French dressing. Thus, it appears that, since the establishment of the standard of identity, French dressing has become a narrower category of products than prescribed by the standard. These products maintain the above characteristics without a standard of identity specifically requiring them.

Additionally, French dressing products are manufactured and sold in lower-fat varieties that contain less than the minimum amount of vegetable oil (35 percent by weight) required by § 169.115(a). In the preamble to the proposed rule, we stated that we were unaware of any evidence that consumers are deceived or misled by the reduction in vegetable oil when these varieties are sold under names including terms such as ''fat free'' or ''low-fat'' (85 FR 82980 at 82982). By contrast, these varieties appear to accommodate consumer preferences and dietary restrictions.

Therefore, after considering the petition and related information, through the proposed rule, we tentatively concluded that the standard of identity for French dressing no longer promotes honesty and fair dealing in the interest of consumers consistent with section 401 of the FD&C Act and proposed to revoke the standard of identity for French dressing. The preamble to the proposed rule also noted that the proposed revocation is consistent with section 6 of Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), which requires agencies to periodically conduct retrospective analyses of existing regulations to identify those ''that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them'' accordingly.

B. Summary of Comments to the Proposed Rule

There were more than 20 comments to the proposed rule. A trade association, a business association, and individuals submitted the comments. Some comments appeared to have been submitted as part of a university course assignment. In general, most comments supported the revocation of the French dressing standard of identity; their reasons supporting the revocation ranged from promoting innovation, believing that consumers are not misled, or stating that the standard of identity was obsolete. A small number of comments misinterpreted the proposed rule as removing or prohibiting the use of the name ''French dressing,'' and one comment opposed revoking the standard of identity because of public health concerns.

III. Legal Authority

We are issuing this final rule to revoke the standard of identity for French dressing consistent with our authority under the FD&C Act, which directs the Secretary to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quantity, or fill of container, whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers.

IV. Comments on the Proposed Rule and FDA Response

A. Introduction

As stated earlier, there were more than 20 comments to the proposed rule. A trade association, a business association, and individuals submitted the comments. Several comments appeared to have been submitted as part of a university course assignment. In general, most comments supported the revocation of the French dressing standard of identity.

A small number of comments misinterpreted the proposed rule as removing or prohibiting the use of the name ''French dressing,'' and one comment opposed revoking the standard of identity because of public health concerns.

We describe and respond to the comments in section IV.B. of this document. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of the Comments and FDA Response

(Comment 1) Most comments supported revoking the standard of identity for French dressing. In general, the comments agreed with us that revoking the standard of identity would:

- Allow manufacturers to innovate their products in ways that consumers want;
- Give French dressing manufacturers the same treatment or flexibility to innovate or modernize their products as other dressing manufacturers have. One comment added that revoking the standard of identity for French dressing would enable manufacturers to substitute ingredients to address allergies, ingredient sensitivities, or even consumer preferences (particularly consumers on a diet); and
- Eliminate an obsolete standard that has not changed significantly over 70 years. Some comments added that consumers recognize French dressing and can judge for themselves whether to buy a particular product.

Other comments said that the standard of identity for French dressing is no longer needed to promote honesty and fair dealing for consumers. Some comments explained that State consumer protection laws and tort laws could protect consumer interests, while others said that consumers are able to determine a product's ingredients through ingredient labeling. One comment said that the standard of identity for French dressing was ''unnecessary red tape.''

(Response 1) We agree with the comments. The final rule revokes the standard of identity for French dressing.

(Comment 2) Some comments interpreted the proposed rule as eliminating the name ''French dressing.'' One comment said that

products marketed as French dressing range in color from orange to red and differ in taste, so the product should lose the ''title'' of French dressing. Another comment said that they did not understand why the name ''French dressing'' has to be ''revoked'' and that the consumer base for the dressing will be ''hurt'' if they look for products named French dressing and are unable to find them.

(Response 2) The comments may have misunderstood the scope of the proposed rule and the distinction between standards of identity and food names. Standards of identity are requirements related to the content and production of certain food products. They typically set forth permitted ingredients, both mandatory and optional, and sometimes describe the amount or proportion of each ingredient. They are established under the common or usual name of the food; however, a standard of identity does not need to be established for a food to be labeled with and sold under its common or usual name. Most foods are nonstandardized foods and are labeled with and sold under common or usual names that have been established by common usage. See 21 U.S.C. 343(i)(1) and 21 CFR 102.5(d). Revocation of the French dressing standard of identity will eliminate requirements related to the content and production of French dressing and effectively place French dressing in the category of nonstandardized foods. As a nonstandardized food, French dressing must be labeled with its common or usual name, ''French dressing,'' which is still in common usage. Thus, food products with the name French dressing will continue to be available to consumers.

(Comment 3) One comment objected to the proposed rule. The comment said that consumer health would be at risk because consumers would be unaware of changes before they buy the product and that manufacturers might use more ''fillers'' in a product so that it is less expensive to make. The comment said we should ''reconsider'' revoking the standard of identity for French dressing because ''it would ultimately put the health of consumers at a slight risk.''

(Response 3) As explained in the proposed rule, the standard of identity does not appear to constrain French dressing products currently on the market. French dressing has become a narrower category of products than prescribed by the standard. These products maintain their characteristics without a standard of identity specifically requiring them. In the absence of a standard of identity, manufacturers will have the flexibility to use different ingredients to produce products that meet consumer expectations for French dressing.

We received no information to support the assertion that manufacturers might use ''fillers'' to ''make the product cheaper to produce.'' It is unclear from the comment what ''fillers'' means, which ingredients this term would encompass, whether such ingredients are used in the manufacture of French dressing, whether such ingredients are prohibited under the standard of identity, and why the use of such ingredients in French dressing would constitute economic adulteration. We note that manufacturers must comply with the ingredient labeling requirements in 21 CFR 101.4. Therefore, consumers will still be informed about the ingredients in the French dressing they purchase.

We also disagree that revoking the standard of identity ''would ultimately put the health of consumers at a slight risk.'' The comment did not provide information discussing what the health risks would be, and we are unaware of any evidence that supports this statement.

(Comment 4) One comment said that it could not believe that the proposed rule was a priority.

(Response 4) We have the authority to issue regulations establishing standards of identity if it promotes honesty and fair dealing in the interest of consumers. Standards of identity are intended to protect consumers against economic adulteration, maintain the integrity of food, and reflect consumers' expectations about the food. This rulemaking is part of our comprehensive effort to modernize food standards to reduce regulatory burden and remove barriers to innovation. As stated in the proposed rule, it appears that French dressing has become a narrower category of products than prescribed by the standard (*e.g.,* most, or all contain tomatoes or tomato-derived ingredients, which the standard of identity does not require). These products maintain their characteristics without a standard of identity specifically requiring them. We conclude that a standard of identity for French dressing no longer promotes honesty and fair dealing in the interest of consumers. Therefore, we are revoking the standard of identity for French dressing.

This action is also consistent with our responsibilities under section 6 of Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), which requires agencies to periodically conduct retrospective analyses of existing regulations to identify those ''that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them'' accordingly.

V. Effective Date

This rule is effective on February 14, 2022.

VI. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we have concluded, as set forth below, that this rule would not generate significant compliance costs, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current threshold after adjustment for inflation is $158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

The final rule affects manufacturers of salad dressings. Our review of supermarket scanner data for the year 2018 shows that a total of 227 distinct pourable products sold as ''French dressing'' that year were manufactured by 53 firms. The final rule does not require any of the affected firms to change their manufacturing practices. Our analysis of current food manufacturing practices and the petition to revoke the standard indicate

that revoking the standard of identity could provide benefits in terms of additional flexibility to the manufacturers of French dressing products. Revoking the standard of identity could provide an opportunity for innovation and the introduction of new French dressing products, providing benefits to both consumers and industry. Therefore, we conclude that the final rule, would provide social benefits at little to no cost to the respective industries (table 1).

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized $millions/year	$0	$0	$0	2018	7		
	.....	.....	.....	.....	3		
Annualized Quantified	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3		
Qualitative	Benefits to manufacturers would be from additional flexibility, and the opportunity for innovation regarding, French dressing products.						
Costs:							
Annualized Monetized $millions/year	0	0	0	2018	7		
	.....	.....	.....	.....	3		
Annualized Quantified	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3		
Qualitative.							
Transfers:							
Federal Annualized Monetized $millions/year	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3		
From/To	From:			To:			
Other Annualized Monetized $millions/year	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3		
From/To	From:			To:			
Effects:							
State, Local or Tribal Government:							
Small Business:							
Wages:							
Growth:							

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(a) 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.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XI. References

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. French Dressing: Revocation of a Standard of Identity: Final Regulatory Impact Analysis, Final Regulatory Flexibility Analysis, Unfunded Mandates Reform Act

Analysis available at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

List of Subjects in 21 CFR Part 169

Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 169 is amended as follows:

PART 169—FOOD DRESSINGS AND FLAVORINGS

■ 1. The authority citation for part 169 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

§ 169.115 [Removed]

■ 2. Remove § 169.115.

Dated: January 6, 2022.

Janet Woodcock,

Acting Commissioner of Food and Drugs.

[FR Doc. 2022–00494 Filed 1–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. FDA–2019–N–3101]

RIN 0910–AI10

Revised Procedures for the Announcement of Approvals and Denials of Premarket Approval Applications and Humanitarian Device Exemption Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to amend the medical device regulations regarding the procedures for the announcement of approvals and denials of premarket approval applications (PMAs) and humanitarian device exemption applications (HDEs). This final rule discontinues the publication in the **Federal Register** after each quarter of a list of PMA and HDE approvals and denials announced in that quarter. We will continue to post approval and denial notices for PMAs and HDEs on FDA's home page on the internet and will also continue to make available on the internet and place on public display summaries of safety and effectiveness data (SSED) for PMAs and summaries of safety and probable benefit (SSPB) for HDEs. FDA is taking this action to improve the efficiency of announcing approvals and denials of PMAs and HDEs and to eliminate duplication in the current process for announcing this information. We are also updating Agency contact information and statutory references in certain sections of the PMA and HDE regulations for purposes of accuracy, clarity, and consistency.

DATES: This rule is effective February 14, 2022.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

For information concerning the final rule as it relates to devices regulated by the Center for Biologics Evaluation and Research: Tami Belouin, 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.

For information concerning the final rule as it relates to devices regulated by the Center for Devices and Radiological Health: Joshua Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–6524.

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I. Executive Summary

A. Purpose of the Final Rule

FDA is amending its medical device regulations regarding the procedures for the announcement of approvals and denials of PMAs and HDEs to discontinue the quarterly publication in the **Federal Register** of a list of approvals and denials of both PMAs and HDEs. FDA will continue to post approval and denial notices for PMAs and HDEs on FDA's home page on the internet (*https://www.fda.gov*) and will also continue to make available on the internet and place on public display SSED for PMAs and SSPB for HDEs. FDA is taking this action to improve the efficiency of announcing approvals and denials of PMAs and HDEs and eliminate duplication in the current process for announcing this information. We are also updating Agency contact information and statutory references in certain PMA and HDE regulations for purposes of accuracy, clarity, and consistency.

B. Summary of the Major Provisions of the Final Rule

FDA is amending its regulations regarding the announcement procedures for the approval and denial of PMAs and HDEs. FDA is discontinuing publishing in the **Federal Register** after each quarter a list of PMA and HDE approvals and denials announced for that quarter. We will continue to post approval and denial notices for PMAs and HDEs on FDA's home page on the internet, and we will also continue to make SSED for PMAs and SSPB for HDEs available on the internet and place them on public display.

C. Legal Authority

FDA is issuing this final rule under sections 515, 520(h), 520(m), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360e, 360j(h), 360j(m), and 371(a)).

D. Costs and Benefits

The benefit of this final rule is that it will result in cost savings to FDA from discontinuing publishing in the **Federal Register**, on a quarterly basis, a list of medical device PMA and HDE approvals and denials. Annualized over 10 years, the estimated benefits (*i.e.,* cost savings) to FDA range from $0.008 million to $0.013 million at both 3 and 7 percent discount rate, with a primary estimate of $0.010 million. We estimate that this final rule will result in no additional costs to industry because the

rule will not require performance of any additional tasks and, therefore, will not impose any additional regulatory burden on the industry.

II. Background

A. Need for the Regulation

FDA is amending its medical device regulations regarding the procedures for the announcement of approvals and denials of PMAs and HDEs to discontinue the quarterly publication in the **Federal Register** of a list of approvals and denials of both PMAs and HDEs. FDA is taking this action to improve the efficiency of announcing approvals and denials of PMAs and HDEs and eliminate duplication in announcing this information. The final rule allows FDA staff to focus on other Agency priorities and utilize FDA staff resources more efficiently. FDA is also revising § 814.44(d)(2) (21 CFR 814.44(d)(2)) to be consistent with § 814.45(d)(2) (21 CFR 814.45(d)(2)), which states that requests for copies of the current PMA approvals and denials document and copies of SSED must be sent in writing to FDA's Freedom of Information Staff. In addition, FDA is updating outdated references to section 515(d)(3) of the FD&C Act in the PMA (§§ 814.40 (21 CFR 814.40), 814.44, and 814.45) and HDE (§ 814.118 (21 CFR 814.118)) regulations.

B. History of the Rulemaking

Section 515(d)(4) of the FD&C Act permits an interested person to obtain review of an order approving a PMA in accordance with section 515(g) of the FD&C Act. The statute does not require the Agency to publish the approval of a PMA in the **Federal Register**; however, FDA issued in the **Federal Register** of July 22, 1986 (51 FR 26342) a final rule that provided, among other things, that notice of approval of a PMA, notice of an order denying approval of a PMA, and notice of an order withdrawing approval of a PMA will be published in the **Federal Register**. In the **Federal Register** of June 26, 1996 (61 FR 33232), FDA issued a final rule prescribing, among other things, the procedures for submitting HDEs, HDE amendments, and HDE supplements, and the criteria for FDA review and approval of HDEs. Furthermore, the final rule of June 26, 1996, provided that the notice of approval of an HDE be published in the **Federal Register** in accordance with the rules and policies applicable to PMAs submitted under 21 CFR 814.20. That final rule also provided that, if FDA issues an order denying approval of an HDE, FDA will comply with the same notice and disclosure provisions required for PMAs under § 814.45(b) and (d), as applicable.

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA issued a final rule discontinuing the publication of individual PMA approvals and denials in the **Federal Register**. The final rule provided that FDA would notify the public of PMA approvals and denials by posting them on FDA's home page on the internet, by making available on the internet and placing on public display SSED, and by publishing in the **Federal Register** after each quarter a list of the PMA approvals and denials announced in that quarter. FDA stated that it believed that this procedure would expedite public notification of these actions because announcements could be placed on the internet more quickly than they could be published in the **Federal Register**, and FDA believed that the internet would be accessible to more people than the **Federal Register**.

In the **Federal Register** of December 17, 2019 (84 FR 68829), FDA published a proposed rule entitled ''Revised Procedures for the Announcement of Approvals and Denials of Premarket Approval Applications and Humanitarian Device Exemption Applications'' to discontinue publishing in the **Federal Register** after each quarter a list of PMA and HDE approvals and denials announced in that quarter. We also proposed to update Agency contact information and statutory references in certain sections of the PMA and HDE regulations for purposes of accuracy, clarity, and consistency. After consideration of the comments received, we are now finalizing the proposed rule without change.

C. Summary of Comments to the Proposed Rule

We received comments on the proposed rule from individual submitters. We received one comment in support of the proposed rule and one comment against discontinuing the quarterly publication in the **Federal Register** of a list of approvals and denials of PMAs and HDEs. These comments are further summarized in section IV.

III. Legal Authority

We are issuing this final rule under the authority of sections 515, 520(h), and 520(m) of the FD&C Act, which set forth requirements for device premarket approval, release of detailed summaries of information respecting the safety and effectiveness of devices, and humanitarian device exemptions, and under section 701(a) of the FD&C Act, which provides FDA the authority to issue regulations for the efficient enforcement of the FD&C Act.

IV. Comments on the Proposed Rule and FDA Response

A. Introduction

We received comments on the proposed rule from individual submitters. We describe and respond to the comments in sections IV.B and C of this document. We have numbered each comment to help distinguish between different comments. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Specific Comments and FDA Response

(Comment 1) One comment supported the proposed rule.

(Response 1) We acknowledge and appreciate the supportive comment.

(Comment 2) One comment opposed discontinuing the publication in the **Federal Register** after each quarter of a list of PMA and HDE approvals and denials announced in that quarter. The comment stated that the **Federal Register** provides a complete, archivable, and reviewable record of Federal Agency decisions, that the FDA website does not provide. The comment further noted that the quarterly **Federal Register** summary may be useful to persons searching for aggregate trends in FDA actions.

(Response 2) We do not believe the quarterly **Federal Register** notice is needed to provide an adequate record of PMA and HDE approvals and denials. The **Federal Register** notice merely summarizes the quarterly PMA and HDE approvals and denials; it does not provide information on those approvals and denials beyond what can be obtained in other formats on the FDA website. Additionally, we will continue to give the public notice of PMA and HDE approvals and denials by placing notices of approvals and denials on FDA's home page on the internet. These notices, along with certain supporting documentation, are also maintained and can be viewed online at *https://www.regulations.gov*.

Furthermore, we do not believe it is necessary to publish the quarterly **Federal Register** notices as a search tool for ''aggregate trends in FDA actions.'' We note that there are existing tools such as FDA's searchable PMA database (*https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPMA/pma.cfm*) and HDE database (*https://*

www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfhde/hde.cfm; https://www.fda.gov/vaccines-blood-biologics/approved-blood-products/premarket-approvals-and-humanitarian-device-exemptions-supporting-documents) that the public can utilize to search for information on PMA and HDE approvals over a certain period of time.

C. Comment Outside the Scope of This Rulemaking

(Comment 3) One comment questioned which products FDA evaluates before they are sold.

(Response 3) We decline to respond because this comment is outside the scope of this final rule.

V. Effective Date

This final rule will become effective 30 days after the date of its publication in the **Federal Register**.

VI. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule will not impose any additional regulatory burden on the industry, we certify that the rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

The benefit of this final rule is that it will result in cost savings to FDA from discontinuing publishing in the **Federal Register**, on a quarterly basis, a list of approvals and denials of PMAs and HDEs. Discontinuing publishing **Federal Register** notices with these approval and denial lists will eliminate duplication in announcing this information; information on these approvals and denials will continue being readily available to the public on FDA's home page on the internet (*https://www.fda.gov*).

We estimate that this final rule will result in no additional costs to industry because the rule will not require performance of any additional tasks. The rule, therefore, will not impose any additional regulatory burden on the industry.

Table 1 summarizes the estimated benefits and costs of the final rule. Annualized over 10 years, the estimated benefits (*i.e.,* cost savings) of the final rule range from $0.008 million to $0.013 million at both 3 and 7 percent discount rate, with a primary estimate of $0.010 million. The present value of the estimated benefits (*i.e.* cost savings) of the final rule ranges from $0.068 million to $0.111 million at a 3 percent discount rate and from $0.056 million to $0.091 million at a 7 percent discount rate. The annualized costs of the final rule are $0 at both 3 and 7 percent discount rate. The present value of costs of the final rule is also $0 at both 3 and 7 percent discount rate.

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF FINAL RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year	$0.010	$0.008	$0.013	2020	7	10	Benefits are cost savings.
Annualized Quantified.	0.010	0.008	0.013	2020	3	10	Benefits are cost savings.
Qualitative.							
Costs:							
Annualized Monetized $millions/year	0	0	0	2020	7	10	
Annualized Quantified.	0	0	0	2020	3	10	
Qualitative.							
Transfers:							
Federal Annualized Monetized $millions/year.							
From/To	From:			To:			
Other Annualized Monetized $millions/year.							
From/To	From:			To:			

Effects:
State, Local or Tribal Government: No significant effect.
Small Business: No significant effect.
Wages: N/A.
Growth: N/A.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) 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.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XI. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA/Economics Staff, ''Revised Procedures for the Announcement of Approvals and Denials of Premarket Approval Applications and Humanitarian Device Exemption Applications, Regulatory Impact Analysis, Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis,'' 2020 (available at: *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations*).

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 814 is amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 1. The authority citation for part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 360bbb–8b, 371, 372, 373, 374, 375, 379, 379e, 379k–1, 381.

§ 814.40 [Amended]

■ 2. In § 814.40, remove ''515(d)(3)'' and add in its place ''515(d)(4)''.

§ 814.44 [Amended]

■ 3. Amend § 814.44 as follows:

■ a. In the fourth sentence in paragraph (d)(1), remove ''515(d)(3)'' and add in its place ''515(d)(4)'' and remove the sixth sentence;

■ b. In paragraph (d)(2), remove ''Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852'' and add in its place ''Freedom of Information Staff's address listed on the Agency's website at *https://www.fda.gov.''*; and

■ c. In paragraphs (e)(2)(ii) and (f)(2), remove ''515(d)(3)'' and add in its place ''515(d)(4)''.

§ 814.45 [Amended]

■ 4. Amend § 814.45 as follows:

■ a. In paragraph (d)(1), remove the third sentence and

■ b. In paragraph (e)(3), remove ''515(d)(3)'' and add in its place ''515(d)(4)''.

■ 5. In § 814.116 revise the fourth sentence in paragraph (b) to read as follows:

§ 814.116 Procedures for review of an HDE.

* * * * *

(b) * * * The notice of approval of an HDE will be placed on the FDA's home page on the internet (*https://www.fda.gov*) in accordance with the rules and policies applicable to PMAs submitted under § 814.20. * * *

* * * * *

§ 814.118 [Amended]

■ 6. In § 814.118(c)(3), remove ''515(d)(3)'' and add in its place ''515(d)(4)''.

Dated: January 6, 2022.

Janet Woodcock,

Acting Commissioner of Food and Drugs.

[FR Doc. 2022–00501 Filed 1–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 882 and 1270

[Docket No. FDA–2020–N–1519]

RIN 0910–AI41

Revocation of the Regulations for Human Tissue Intended for Transplantation and Human Dura Mater

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to revoke the regulations for human tissue intended for transplantation and human dura mater recovered prior to May 25, 2005. The revocation does not affect the regulations for human cells, tissues, and cellular and tissue-based products (HCT/Ps) recovered on or after May 25, 2005. The rule is being finalized because these regulations are obsolete or no longer necessary to achieve public health goals.

DATES: This rule is effective February 14, 2022.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the

docket number found in brackets in the heading of this final rule 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: Shruti Modi, 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:

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I. Executive Summary

A. Purpose of the Final Rule

FDA is removing the regulations under part 1270 (21 CFR part 1270), ''Human Tissue Intended for Transplantation'' and § 882.5975 (21 CFR 882.5975), ''Human dura mater.'' These regulations apply to certain tissues recovered prior to May 25, 2005. The Agency does not believe there are currently any tissues intended for transplantation remaining in inventory that were recovered prior to this date and that would be subject to these regulations. Therefore, the regulations under this part are outdated and obsolete. All HCT/Ps recovered on or after May 25, 2005, are subject to the regulations under part 1271 (21 CFR part 1271), ''Human Cells, Tissues, and Cellular and Tissue-Based Products.''

B. Summary of the Major Provisions of the Final Rule

The final rule removes part 1270, ''Human Tissue Intended for Transplantation,'' which applies to certain human tissue and to establishments or persons engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. It also removes § 882.5975, ''Human dura mater,'' which identifies and classifies human dura mater recovered prior to May 25, 2005.

C. Legal Authority

FDA is taking this action under the communicable disease provisions of the Public Health Service Act (the PHS Act) and the device provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

D. Costs and Benefits

Because this final rule will not impose any additional burden on the industry, this regulation is not anticipated to result in any compliance costs and the economic impact is expected to be minimal.

II. Background

A. Introduction

FDA is issuing a final rule to revoke the regulations for human tissue intended for transplantation (part 1270) and human dura mater (§ 882.5975) recovered prior to May 25, 2005, because these regulations are obsolete or no longer necessary to achieve public health goals. The revocation does not affect the regulations for human cells, tissues, and cellular and tissue-based products (HCT/Ps) recovered on or after May 25, 2005.

B. Need for Regulation/History of Rulemaking

FDA regulates articles containing or consisting of human cells or tissues intended for implantation, transplantation, infusion, or transfer into a human recipient. These are defined in § 1271.3(d) (21 CFR 1271.3(d)) as HCT/Ps. Tissues as defined in § 1270.3(j) (21 CFR 1270.3(j)) recovered prior to May 25, 2005, are regulated under part 1270. HCT/Ps recovered on or after May 25, 2005, are subject to the regulations in part 1271. Examples of HCT/Ps include, but are not limited to the following: Bone, ligament, skin, cornea, dura mater, heart valve, hematopoietic stem/progenitor cells derived from peripheral and cord blood, and semen or other reproductive tissue. Vascularized human organs for transplantation are not considered HCT/Ps. FDA previously regulated human dura mater recovered prior to May 25, 2005, under § 882.5975 subject to special controls and premarket notification.[1]

In the **Federal Register** of December 14, 1993 (58 FR 65514), FDA published an interim rule (1993 interim rule) for human tissue intended for transplantation. This rule provided specific donor suitability and testing requirements for certain tissue products. As the use of human tissue for transplantation increased, FDA determined that there was a need for a much more comprehensive set of regulatory requirements that included a broader scope of products. In the **Federal Register** of July 29, 1997 (62 FR 40429), FDA issued a final rule that clarified and modified provisions of the 1993 interim rule.

In the **Federal Register** of March 4, 1997 (62 FR 9721), FDA announced the availability of a document entitled ''Proposed Approach to the Regulation of Cellular and Tissue-Based Products'' that detailed how cellular and tissue-based products would be regulated with a tiered approach based on risk and the necessity for FDA review.

As part of this approach, FDA advanced three regulatory proposals including: (1) Registration and listing; (2) communicable-disease screening and testing; and (3) processing standards. FDA published three final rules to implement the proposed approach, which are codified in part 1271 as follows: (1) ''Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing'' (66 FR 5447, January 19, 2001); (2) ''Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products'' (69 FR 29786, May 25, 2004); and (3) ''Current Good Tissue Practice for Human Cell, Tissue, and Cellular and Tissue-Based Product Establishments, Inspection and Enforcement'' (69 FR 68611, November 24, 2004).

FDA issued these regulations to increase the safety of HCT/Ps, and public confidence in their safety, by helping to prevent the introduction, transmission, and spread of communicable disease. The regulations were issued to protect the public health while minimizing regulatory burden, which in turn would encourage significant innovation.

C. Applicability of § 882.5975 and Part 1270

The Agency did not revoke part 1270 at the same time the Agency proposed part 1271 because it would have been

[1] The special controls for human dura matter recovered prior to May 25, 2005, can be found in ''Class II Special Controls Guidance Document: Human Dura Mater—Guidance for Industry and FDA Staff'', available at *https://www.fda.gov/medical-devices/guidance-documents-medical-devices-and-radiation-emitting-products/class-ii-special-controls-guidance-document-human-dura-mater-guidance-industry-and-fda-staff.*

impractical to apply part 1271 retroactively to human tissue, as defined in § 1270.3(j), that was recovered before the effective date of the final rule. Instead, the Agency decided that human tissue, as defined in § 1270.3(j), that was recovered prior to May 25, 2005, would remain subject to the regulations in part 1270. However, in the final rules applicable to HCT/Ps (66 FR 5447 at 5448; 69 FR 68611), FDA noted its intention to revoke part 1270 in the future when we were confident that there was no human tissue regulated under part 1270 available for use.

Part 1270 applies only to human tissue defined in § 1270.3(j) and recovered prior to May 25, 2005. The device classification set forth in § 882.5975, ''Human dura mater,'' is only applicable to human dura mater recovered prior to May 25, 2005. Human dura mater recovered on or after May 25, 2005, is subject to the regulations in part 1271 when an establishment does not qualify for any of the exceptions in 21 CFR 1271.15. Further, human dura mater is regulated solely under section 361 of the PHS Act (42 U.S.C. 264) and part 1271 when the HCT/P meets all the criteria set out in 21 CFR 1271.10(a). Otherwise the HCT/P is regulated as a drug, device, and/or biological product under the FD&C Act, and/or section 351 of the PHS Act (42 U.S.C. 262), and applicable regulations, including part 1271.

Products that meet the definition of an HCT/P in § 1271.3(d) that are recovered on or after May 25, 2005, including those that have been regulated after May 25, 2005, as drugs, devices, and/or biological products under section 351 of the PHS Act and/or the FD&C Act will not be affected by revocation of part 1270.

We do not believe there are currently any tissues intended for transplantation remaining in inventory that were recovered prior to May 25, 2005, that would be subject to these regulations. Therefore, the regulations under § 882.5975 and its accompanying special control guidance, and the regulations under part 1270 are outdated and obsolete.

D. Comments to the Proposed Rule

In the **Federal Register** of December 21, 2020 (85 FR 82990), FDA published a proposed rule entitled ''Revocation of the Regulations for Human Tissue Intended for Transplantation and Human Dura Mater'' to revoke the regulations for human tissue intended for transplantation and human dura mater recovered prior to May 25, 2005. We did not receive any comments on the proposed rule. Therefore, we are finalizing the proposed rule without change.

III. Legal Authority

FDA is issuing this final rule under the communicable disease provisions of the PHS Act, which provide FDA with the authority to issue and enforce regulations designed to prevent the introduction, transmission, and spread of communicable disease (42 U.S.C. 216, 243, 264, and 271), and provisions of the FD&C Act applicable to devices (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, and 371)).

IV. Effective Date

This final rule will become effective 30 days after the date of its publication in the **Federal Register**.

V. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the rule will not create new regulatory responsibilities for small entities, we certify that the rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Costs and Benefits

This final rule will remove the obsolete regulations under part 1270 for human tissue intended for transplantation into a human recipient and § 882.5975 for human dura matter. These regulations only apply to certain tissue derived from a human body and recovered prior to May 25, 2005. We believe it is highly unlikely any such human tissues remain available for use today. The final rule, therefore, is not anticipated to result in any compliance costs to the industry. We expect the economic impact on FDA resulting from removing an obsolete regulation to be minimal.

Table 1 summarizes the estimated benefits and costs of the final rule. Annualized over 10 years, the estimated benefits (*i.e.* cost savings) of the final rule will be $0 at both the 3 and 7 percent discount rate. The present value of the estimated benefits (*i.e.,* cost savings) of the final rule will also be $0 at both the 3 and 7 percent discount rate. The annualized costs of the final rule will be $0 at both 3 and 7 percent discount rate. The present value of costs of the final rule will also be $0 at both 3 and 7 percent discount rate.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year	$0	$0	$0	2020	7	10	
	0	0	0	2020	3	10	
Annualized Quantified							

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Qualitative	Field investigators will no longer need to reference the obsolete regulations, resulting in very minor cost savings for FDA in terms of employee time.						
Costs:							
Annualized Monetized $millions/year	0	0	0	2020	7	10	
	0	0	0	2020	3	10	
Annualized Quantified					7		
					3		
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year					7		
					3		
From/To	From:			To:			
Other Annualized Monetized $millions/year					7		
					3		
	From/To			From:			

Effects:
State, Local or Tribal Government: None
Small Business: None
Wages: None
Growth: None

FDA has examined the economic implications of the rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities. This rule will not impose any new burdens on small entities, and thus will not impose a significant economic impact on a substantial number of small entities.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VI. Analysis of Environmental Impact

We have determined under 21 CFR 25.31(h) 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.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

IX. Consultation and Coordination With Indian Tribal Governments

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

X. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, Final Regulatory Impact Analysis; Final Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis, Revocation of the Regulations for Human Tissue Intended for Transplantation; Final Rule. Also available at: *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

List of Subjects

21 CFR Part 882

Medical devices.

21 CFR Part 1270

Communicable diseases, HIV/AIDS, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food

and Drugs, 21 CFR parts 882 and 1270 are amended as follows:

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.

§ 882.5975 [Removed]

■ 2. Remove § 882.5975.

PART 1270—[REMOVED]

■ 3. Under the authority of 42 U.S.C. 216, 243, 264, 271, part 1270 is removed.

Dated: January 6, 2022.

Janet Woodcock,

Acting Commissioner of Food and Drugs.

[FR Doc. 2022–00492 Filed 1–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0022]

RIN 1625–AA00

Safety Zones; Delaware River Dredging, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is re-establishing temporary safety zones on the waters of the Delaware River in portions of Marcus Hook Range and Anchorage 7 off Marcus Hook Range. The safety zones temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River while maintenance dredging is being conducted within the Delaware River. The safety zones are needed to protect personnel, vessels, and the marine environment from hazards created by dredging operations. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the COTP or his designated representatives.

DATES: This rule is effective without actual notice from January 13, 2022 through January 31, 2022. For the purposes of enforcement, actual notice will be used from January 6, 2022, until January 13, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0022 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 Petty Officer Jennifer Padilla, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271–4889, email *Jennifer.l.padilla@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

On September 2, 2021, the Coast Guard established temporary safety zones on the waters of the Delaware River in portions of Marcus Hook Range and Anchorage 7 off Marcus Hook Range to temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River in association with maintenance dredging within the Delaware River (86 FR 49241, Sept. 2, 2021). That rule expired November 2, 2021. On January 6, 2022, the dredging company informed the Coast Guard about additions to the original contract and the need to extend the project. The new estimated completion date is January 31, 2022.

The Coast Guard is issuing this 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 and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for dredging operations. The rule must be in force by January 6, 2022, to serve its purpose of ensuring the safety of the public from hazards associated with dredging operations such as submerged and floating pipeline, booster pumps, head sections and vessels with a restricted ability to maneuver.

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 impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with dredging operations in these locations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with dredging operations. The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment within a 250-yard radius of dredging operations and all associated pipeline and equipment.

IV. Discussion of the Rule

This rule re-establishes the safety zones established on September 2, 2021, (86 FR 49241, Sept. 2, 2021). The re-established zones will be in effect from January 6, 2022, through January 31, 2022. This change is reflected in a revised enforcement paragraph, paragraph (e). This rule makes no other changes to the previoius rule. The locations and restrictions of the safety zones established by the September rule remain the same.

The safety zones are necessary to facilitate annual maintenance dredging of the Delaware River in the vicinity of Marcus Hook Range and Anchorage 7 off Marcus Hook Range (as described in 33 CFR 110.157(a)(8)). Dredging will most likely be conducted with the dredge ESSEX, though other dredges may be used, along with associated dredge pipeline and boosters. The pipeline consists of a combination of floating hoses immediately behind the dredge and submerged pipeline leading to upland disposal areas. Due to the hazards related to dredging operations, the associated pipeline, and the location of submerged pipeline, safety zones are being established in the following areas:

(1) Safety zone one includes all navigable waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, and all related dredge equipment when the dredge is operating in Marcus Hook Range, and Anchorage 7. This safety zone is being established for the duration of the maintenance project. Vessels requesting to transit the safety zone must contact the dredge on VHF channel 13 or 16 at least 1 hour prior

to arrival to arrange safe passage. At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of the safety zone. At no time will the entire main navigational channel be closed to vessel traffic. Vessels should avoid meeting in these areas where one side of the main navigational channel is open and proceed per this rule and the Rules of the Road (33 CFR subchapter E).

(2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8). Vessels wishing to anchor in Anchorage 7 off Marcus Hook Range while this rule is in effect must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. Vessels requesting permission to anchor within Anchorage 7 off Marcus Hook must be at least 650 feet in overall length. The COTP will permit, at minimum, only one vessel to anchor at a time on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage by the COTP for the required inspection. Vessels are encouraged to use Anchorage 9 near the entrance to Mantua Creek, Anchorage 10 at Naval Base, Philadelphia, and Anchorage 6 off Deepwater Point Range as alternative anchorages.

Preference is being given to vessels at least 650 feet in length in the Anchorage 7 while this rule is in effect, because vessels of this size are limited in their ability to utilize other anchorages due to draft. The depth of Anchorage 7 provides an acceptable depth for large vessels to bunker and stage for facility arrival. Smaller vessels maintain a host of other options to include, but are not limited to Anchorage 9 and 10 as recommended above.

Entry into, transiting, or anchoring within safety zone one is prohibited unless vessels obtain permission from the COTP or make satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). The COTP may issue updates regarding the vessel and equipment being utilized for these dredging operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

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 size, location, duration, and traffic management of the safety zones. The safety zones will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic. At least one side of the main navigational channel will be open for vessels to transit at all times. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic can transit the area safely.

Although this regulation will restrict access to regulated areas, the effect of this rule will not be significant because there are a number of alternate anchorages available for vessels to anchor. Furthermore, vessels may transit through the safety zones with the permission of the COTP or make satisfactory passing arrangements with the dredge ESSEX, or other dredge(s) that may be used in accordance with this rule and the Rules of the Road (33 CFR subchapter E). The Coast Guard will notify the maritime public about the safety zones through maritime advisories, allowing mariners to alter their plans accordingly.

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 safety zones to protect waterway users that would prohibit entry within 250 yards of dredging operations, within Marcus Hook Anchorage and will close only one side of the main navigation channel. It is categorically excluded from further review under paragraph L[60a] 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.T05–0022, to read as follows:

§ 165.T05–0022 Safety Zones, Delaware River Dredging; Marcus Hook, PA.

(a) *Location.* The following areas are safety zones:

(1) Safety zone one includes all waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, as well as all related dredge equipment, while the dredge is operating in Marcus Hook Range. For enforcement purposes Marcus Hook Range includes all navigable waters of the Delaware River shoreline to shoreline, bound by a line drawn perpendicular to the center line of the channel at the farthest upriver point of the range to a line drawn perpendicular to the center line of the channel at the farthest downriver point of the range.

(2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8) and depicted on U. S. Nautical Chart 12312.

(b) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Entry into or transiting within the safety zone one is prohibited unless vessels obtain permission from the Captain of the Port via VHF–FM channel 16 or 215–271–4807, or make satisfactory passing arrangements via VHF–FM channel 13 or 16 with the operating dredge per this section and the rules of the Road (33 CFR subchapter E). Vessels requesting to transit shall contact the operating dredge via VHF–FM channel 13 or 16 at least 1 hour prior to arrival.

(2) Vessels desiring to anchor in safety zone two, Anchorage 7 off Marcus Hook Range, must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. The COTP will permit, at minimum, one vessel at a time to anchor on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage for the required inspection by the COTP.

(3) Vessels desiring to anchor in safety zone two, Anchorage 7 off Marcus Hook Range, must be at least 650 feet in length overall.

(4) This section applies to all vessels except those engaged in the following operations: Enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by federal, state and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This rule will be enforced from January 6, 2022, through January 31, 2022, unless cancelled earlier by the Captain of the Port.

Dated: January 6, 2022.

Jonathan D. Theel,

Captain, U. S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2022–00560 Filed 1–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 414

[CMS–6081–N]

Medicare Program; Updates to Lists Related to Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Conditions of Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Updates to and selection of certain codes.

SUMMARY: This document announces the updated Healthcare Common Procedure Coding System (HCPCS) codes on the Master List of DMEPOS Items Potentially Subject to Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements. It also announces the initial selection of HCPCS codes on the Required Face-to-Face Encounter and Written Order Prior to Delivery List and the updates the HCPCS codes on the Required Prior Authorization List.

DATES: The implementation is effective on April 13, 2022. Prior authorization will be implemented in 3 incremental phases, with the final phase being national implementation. Phase 1 includes 1 state per jurisdiction and is effective April 13, 2022, Phase 2 includes 4 States per jurisdiction and is effective July 12, 2022, and Phase 3 is nationwide and is effective October 10, 2022.

FOR FURTHER INFORMATION CONTACT: Susan Billet, (410) 786–1062.

Emily Calvert, (410) 786–4277.
Stephanie Collins, (410) 786–3100.
Jennifer Phillips, (410) 786–1023.
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SUPPLEMENTARY INFORMATION:

I. Background

Sections 1832, 1834, and 1861 of the Social Security Act (the Act) establishes benefits and the provisions of payment for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) items under Part B of the Medicare program.

Section 1834(a)(1)(E)(iv) of the Act provides conditions of coverage specific to Power Mobility Devices (PMDs). Specifically, it provides that payment may not be made for a covered item consisting of a motorized or power wheelchair unless a physician (as defined in section 1861(r)(1) of the Act), physician assistant (PA), nurse practitioner (NP), or clinical nurse specialist (CNS) (as such non-physician practitioners are defined in section 1861(aa)(5) of the Act) has conducted a face-to-face examination of the individual and written a prescription for the item.

Section 1834(a)(11)(B) of the Act requires a physician, PA, NP, or CNS to have a face-to-face encounter with the beneficiary within the 6-month period prior to the written order for certain DMEPOS items (or other reasonable timeframe as determined by the Secretary of the Department of Health and Human Services (the Secretary)).

Section 1834(a)(15)(A) of the Act authorizes the Secretary to develop and periodically update a list of DMEPOS items that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization and to develop a prior authorization process for these items.

In 2006, we issued Final Rule ''Medicare Program; Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles'' (71 FR 17021) to implement the requirements for a face-to-face examination and written order prior to delivery for PMDs, in accordance with legislation found in section 302(a)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173), as codified in amended section 1834(a)(1)(E)(iv) of the Act. This regulation applied to all power mobility devices—including power wheelchairs and power operated vehicles (hereinafter referred to as PMDs). The requirements for PMDs mandated a 7-element order/prescription for payment.

In the November 16, 2012 **Federal Register**, we published final rule titled ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, DME Face-to-Face Encounters, Elimination of the Requirement for Termination of Non-Random Prepayment Complex Medical Review and Other Revisions to Part B for CY 2013'' (77 FR 68892) requiring face-to-face encounter and written order prior to delivery for specified DMEPOS items, in accordance with the authorizing legislation found section 6407 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) and amended section 1834(a)(11)(B) of the Act. The regulation, as codified in 42 CFR 410.38, specified the inclusion criteria for creating a list of DMEPOS items to be subject to face-to-face encounter and written order prior to delivery requirements. It also mandated a 5-element order/prescription for payment of specified DMEPOS items.

In the December 30, 2015 **Federal Register**, we published final rule titled ''Medicare Program; Prior Authorization Process for Certain Durable Medical Equipment, Prosthetics, and Supplies'' (80 FR 81674), in accordance with section 1834(a)(15) of the Act, we established the Master List of Items Frequently Subject to Unnecessary Utilization. The 2015 Master List included certain DMEPOS items that the Secretary determined, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and created a prior authorization process for these items.

On November 8, 2019, we published a final rule titled, ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule Amounts, DMEPOS Competitive Bidding Program (CBP) Amendments, Standard Elements for a DMEPOS Order, and Master List of DMEPOS Items Potentially Subject to a Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements'' (84 FR 60648). The rule became effective January 1, 2020, harmonizing the lists of DMEPOS items created by former rules and establishing one ''Master List of DMEPOS Items Potentially Subject to Face-To-Face Encounter and Written Orders Prior to Delivery and/or Prior Authorization Requirements'' (the ''Master List''). Items are selected from the Master List for inclusion on the Face-To-Face Encounter and Written Orders Prior to Delivery List and/or Prior Authorization List through the **Federal Register**.

II. Provisions of the Document

This document serves to publish three separate lists. First, it provides an update to the Master List of items from which we can select to include on the Required Face to Face Encounter and Written Order Prior to Delivery List, and/or Required Prior Authorization List. This document also serves to announce the initial selection of items to be included on the Required Face-to-Face Encounter and Written Order Prior to Delivery List. Lastly, it updates the items included on the Required Prior Authorization List.

A. Master List of DMEPOS Items Frequently Subject to Unnecessary Utilization

The Master List includes items that appear on the DMEPOS Fee Schedule and meet the following criteria, as established in 84 FR 60648:

- Have an average purchase fee of $500 or greater that is adjusted annually for inflation, or an average monthly rental fee schedule of $50 or greater that is adjusted annually for inflation, or items identified as accounting for at least 1.5 percent of Medicare expenditures for all DMEPOS items over a recent 12-month period, that are also—

++ Identified in a Government Accountability Office (GAO) or Department of Health and Human Services Office of Inspector General (OIG) report that is national in scope and published in 2015 or later as having a high rate of fraud or unnecessary utilization; or

++ Listed in the 2018 or subsequent year Comprehensive Error Rate Testing (CERT) program's Medicare Fee-for-Service (FFS) Supplemental Improper Payment Data Report as having a high improper payment rate.

- Any items with at least 1,000 claims and $1 million in payments during a recent 12-month period that are determined to have aberrant billing patterns and lack explanatory contributing factors (for example, new technology or coverage policies that may require time for providers and suppliers to be educated on billing policies). Items with aberrant billing patterns would be identified as those items with payments during a 12-month timeframe that exceed payments made during the preceding 12-months by the greater of—

++ Double the percent change of all DMEPOS claim payments for items that meet the previous claim and payment

criteria, from the preceding 12-month period; or

++ Exceeding a 30 percent increase in payments for the items from the preceding 12-month period.

• Any items statutorily requiring a face-to-face encounter, a written order prior to delivery, or prior authorization.

In the November 2019 final rule noted previously, we described the maintenance process of the Master List as follows:

• The Master List will be updated annually, and more frequently as needed (for example, to address emerging billing trends), and to reflect the thresholds specified in the regulations.

• Items on the DMEPOS Fee Schedule that meet the payment threshold criteria set forth in § 414.234(b)(1) are added to the list when the item is also listed in a CERT, OIG, or GAO report published after 2020, and items not meeting the cost (approximately $500 purchase or $50 rental) thresholds may still be added based on findings of aberrant billing patterns.

• Items are removed from the Master List 10 years after the date the item was added, unless the item was identified in an OIG report, GAO report, or having been identified in the CERT Medicare Fee for Service Supplemental Improper Payment Data report as having a high improper payment rate, within the 5-year period preceding the anticipated date of expiration.

• Items are removed from the list sooner than 10 years if the purchase amount drops below the payment threshold.

• Items already on the Master List that are identified on a subsequent OIG, GAO, or CERT report will remain on the list for 10 years from the publication date of the new report.

• Items are updated on the Master List when the Healthcare Common Procedure Coding System (HCPCS) codes representing an item have been discontinued and cross-walked to an equivalent item.

• We will notify the public of any additions and deletions from the Master List by posting a notification in the **Federal Register** and on the CMS Prior Authorization website at *https://www.cms.gov/research-statistics-data-systems/medicare-fee-service-compliance-programs/prior-authorization-and-pre-claim-review-initiatives*.

This document provides the annual update to the Master List of DMEPOS Items Potentially Subjected to a Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements stated in the November 2019 final rule (84 FR 60648). As noted previously, we adjust the ''payment threshold'' each year for inflation. Certain DMEPOS fee schedule amounts are updated for 2021 [1] by the percentage increase in the consumer price index for all urban consumers (United States city average) CPI–U for the 12-month period ending June 30, 2020, adjusted by the change in the economy-wide productivity equal to the 10-year moving average of changes in annual economy-wide private non-farm business multi-factor productivity (MFP). The productivity adjustment is 0.4 percent and the CPI–U percentage increase is 0.6 percent. Thus, the 0.6 percentage increase in the CPI–U is reduced by the 0.4 percentage increase in the MFP resulting in a net increase of 0.2 percent for the update factor for CY 2021.

For CY 2021, the 0.2 percent update factor was applied to the CY 2020 average price threshold of $500, resulting in a CY 2021 adjusted payment threshold of $501 ($500 × 1.002). This results in a CY 2021 adjusted purchase price threshold of $501. An update factor of 0.2 percent was applied to the CY 2020 average monthly rental fee of $50, resulting in an adjusted payment threshold of $50.10 ($50 × 1.002). Rounding this figure to the nearest whole dollar amount results in a CY 2021 adjusted monthly rental fee threshold of $50.

A total of 31 HCPCS codes (see Table 1) meeting the criteria outlined previously are added to the Master List. Of these 31 HCPCS codes, 18 are added because these items meet the updated payment threshold and are listed in an OIG or GAO report of a national scope or a CERT DME and DMEPOS Service Specific Report(s) or both, and 13 are added for being identified as accounting for at least 1.5 percent of Medicare expenditures for all DMEPOS items over a recent 12-month period.

TABLE 1—ADDITIONS TO THE MASTER LIST

HCPCS	Description
A4352	Intermittent Urinary Catheter; Coude (Curved) Tip, With Or Without Coating (Teflon, Silicone, Silicone Elastomeric, Or Hydrophilic, Etc.), Each.
A5121	Skin Barrier; Solid, 6 x 6 Or Equivalent, Each.
A6203	Composite Dressing, Sterile, Pad Size 16 Sq. In. Or Less, With Any Size Adhesive Border, Each Dressing.
A6219	Gauze, Non-Impregnated, Sterile, Pad Size 16 Sq. In. Or Less, With Any Size Adhesive Border, Each Dressing.
A6242	Hydrogel Dressing, Wound Cover, Sterile, Pad Size 16 Sq. In. Or Less, Without Adhesive Border, Each Dressing.
A7030	Full Face Mask Used With Positive Airway Pressure Device, Each.
A7031	Face Mask Interface, Replacement For Full Face Mask, Each.
E0467	Home Ventilator, Multi-Function Respiratory Device, Also Performs Any Or All Of The Additional Functions Of Oxygen Concentration, Drug Nebulization, Aspiration, And Cough Stimulation, Includes All Accessories, Components And Supplies For All Functions.
E0565	Compressor, Air Power Source For Equipment Which Is Not Self-Contained Or Cylinder Driven.
E0650	Pneumatic Compressor, Non-Segmental Home Model.
E0651	Pneumatic Compressor, Segmental Home Model Without Calibrated Gradient Pressure.
E0652	Pneumatic Compressor, Segmental Home Model With Calibrated Gradient Pressure.
E0656	Segmental Pneumatic Appliance For Use With Pneumatic Compressor, Trunk.
E0657	Segmental Pneumatic Appliance For Use With Pneumatic Compressor, Chest.
E0670	Segmental Pneumatic Appliance For Use With Pneumatic Compressor, Integrated, 2 Full Legs And Trunk.
E0675	Pneumatic Compression Device, High Pressure, Rapid Inflation/Deflation Cycle, For Arterial Insufficiency (Unilateral Or Bilateral System).
E0740	Non-Implanted Pelvic Floor Electrical Stimulator, Complete System.
E0744	Neuromuscular Stimulator For Scoliosis.
E0745	Neuromuscular Stimulator, Electronic Shock Unit.
E0764	Functional Neuromuscular Stimulation, Transcutaneous Stimulation Of Sequential Muscle Groups Of Ambulation With Computer Control, Used For Walking By Spinal Cord Injured, Entire System, After Completion Of Training Program.
E0766	Electrical Stimulation Device Used For Cancer Treatment, Includes All Accessories, Any Type.
E1226	Wheelchair Accessory, Manual Fully Reclining Back, (Recline Greater Than 80 Degrees), Each.
E2202	Manual Wheelchair Accessory, Nonstandard Seat Frame Width, 24–27 Inches.
E2203	Manual Wheelchair Accessory, Nonstandard Seat Frame Depth, 20 To Less Than 22 Inches.
E2613	Positioning Wheelchair Back Cushion, Posterior, Width Less Than 22 Inches, Any Height, Including Any Type Mounting Hardware.

[1] CY 2021 Update for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule (December 4, 2020): *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Transmittals/r10504cp*.

TABLE 1—ADDITIONS TO THE MASTER LIST—Continued

HCPCS	Description
L0830	Halo Procedure, Cervical Halo Incorporated Into Milwaukee Type Orthosis.
L1005	Tension Based Scoliosis Orthosis And Accessory Pads, Includes Fitting And Adjustment.
L1906	Ankle Foot Orthosis, Multiligamentous Ankle Support, Prefabricated, Off-The-Shelf.
L2580	Addition To Lower Extremity, Pelvic Control, Pelvic Sling.
L2624	Addition To Lower Extremity, Pelvic Control, Hip Joint, Adjustable Flexion, Extension, Abduction Control, Each.
L7368	Lithium Ion Battery Charger, Replacement Only.

The following five HCPCS codes (see Table 2) are removed from the Master List because they no longer have a DMEPOS Fee Schedule price of $501 or greater, or an average monthly rental fee schedule of $50 or greater, and are identified as accounting for at least 1.5 percent of Medicare expenditures for all DMEPOS items over a recent 12-month period or both.

TABLE 2—DELETIONS FROM THE MASTER LIST

HCPCS	Description
A4253	Blood Glucose Test or Reagent Strips for Home Blood Glucose Monitor, Per 50 Strips.
A4351	Intermittent Urinary Catheter; Straight Tip, With or Without Coating (Teflon, Silicone, Silicone Elastomer, Or Hydrophilic, Etc.), Each.
E2369	Power Wheelchair Component, Drive Wheel Gear Box, Replacement Only.
E2377	Power Wheelchair Accessory, Expandable Controller, Including All Related Electronics and Mounting Hardware, Upgrade Provided At Initial Issue.
L3761	Elbow Orthosis (Eo), With Adjustable Position Locking Joint(S), Prefabricated, Off-The-Shelf.

The full updated list is available in the download section of the following CMS website: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/DMEPOS/Prior-Authorization-Process-for-Certain-Durable-Medical-Equipment-Prosthetic-Orthotics-Supplies-Items.*

B. Items Subject to Face-to-Face Encounter and Written Order Prior to Delivery Requirements

In the November 2019 final rule, we stated that since the face-to-face encounter and written orders are statutorily required for PMDs, they would be included on the Master List and the Required Face-to-Face Encounter and Written Order Prior to Delivery List in accordance with our statutory obligation, and would remain there.

The Required Face-to-Face Encounter and Written Order Prior to Delivery List, as specified in § 410.38(c)(8), is comprised of PMDs and those items selected from the Master List (as described in § 414.234(b)) to require a face-to-face encounter and a written order prior to delivery as a condition of payment.

The rule established a process of placing items on the Required Face-to-Face Encounter and Written Order Prior to Delivery List, including that they be communicated to the public and effective no less than 60 days after a **Federal Register** document publication and CMS website posting.

We note that following the publication of the November 2019 final rule (84 FR 60648), the serious public health threats posed by the spread of the 2019 Novel Coronavirus (COVID–19) became known, and subsequently the addition of new items on the Required Face-to-Face Encounter and Written Order Prior to Delivery List was placed on hold.

We also note that in an interim final rule with comment period titled ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'' and published on April 6, 2020 (84 FR 19230), we stated that ''to the extent an NCD or LCD (including articles) would otherwise require a face-to-face or in-person encounter for evaluations, assessments, certifications or other implied face-to-face services, those requirements would not apply during the PHE for the COVID–19 pandemic.'' This language does not apply to the face-to-face encounter and written order prior to delivery requirements stemming from 42 CFR 410.38 and section 1834 of the Act; therefore, the ongoing direction provided in the April 2020 rule is not affected by this document. The list of DMEPOS items selected and promulgated in this document will require a face-to-face encounter (conducted either via telehealth or in-person), per 42 CFR 410.38, effective after 90 days' notice.

At this time, we believe it appropriate to add a limited list of items that pose a risk to the Medicare Trust Funds, to be subject to additional practitioner oversight via the face-to-face encounter and written order prior to delivery requirements.

To assist stakeholders in preparing for implementation of the Required Face-to-Face Encounter and Written Order Prior to Delivery List, we are publishing the proposed code additions and providing 90 days' notice.

Per statutory requirements, Table 3 lists DMEPOS HCPCS codes for PMDs. Section 1834(a)(1)(E)(iv) of the Act explicitly requires a face-to-face and written order for PMDs; therefore, PMDs require a face-to-face encounter per statute. To reflect this, PMDs will both be placed and will remain on the Required Face-to-Face Encounter and Written Order Prior to Delivery List indefinitely.

Section 1834(a)(11)(B) of the Act authorizes the Secretary to select other DMEPOS HCPCS codes that will require a face-to-face encounter and written order prior to delivery as a condition of payment. In addition to PMDs, this **Federal Register** document announces the addition of seven other DMEPOS HCPCS codes, not required by statute, that are selected from the Master List to be placed on the Required Face-to-Face Encounter and Written Order Prior to Delivery List as listed in Table 4, based on our regulatory authority at 42 CFR 410.38.

TABLE 3—STATUTORILY REQUIRED POWER MOBILITY DEVICES

HCPCS	Description
K0800	Power Operated Vehicle, Group 1 Standard, Patient Weight Capacity Up To And Including 300 Pounds.
K0801	Power Operated Vehicle, Group 1 Heavy Duty, Patient Weight Capacity, 301 To 450 Pounds.
K0802	Power Operated Vehicle, Group 1 Very Heavy Duty, Patient Weight Capacity 451 To 600 Pounds.
K0806	Power Operated Vehicle, Group 2 Standard, Patient Weight Capacity Up To And Including 300 Pounds.
K0807	Power Operated Vehicle, Group 2 Heavy Duty, Patient Weight Capacity 301 To 450 Pounds.
K0808	Power Operated Vehicle, Group 2 Very Heavy Duty, Patient Weight Capacity 451 To 600 Pounds.
K0813	Power Wheelchair, Group 1 Standard, Portable, Sling/Solid Seat And Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0814	Power Wheelchair, Group 1 Standard, Portable, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0815	Power Wheelchair, Group 1 Standard, Sling/Solid Seat And Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0816	Power Wheelchair, Group 1 Standard, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0820	Power Wheelchair, Group 2 Standard, Portable, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0821	Power Wheelchair, Group 2 Standard, Portable, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0822	Power Wheelchair, Group 2 Standard, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0823	Power Wheelchair, Group 2 Standard, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0824	Power Wheelchair, Group 2 Heavy Duty, Sling/Solid Seat/Back, Patient Weight Capacity 301 To 450 Pounds.
K0825	Power Wheelchair, Group 2 Heavy Duty, Captains Chair, Patient Weight Capacity 301 To 450 Pounds.
K0826	Power Wheelchair, Group 2 Very Heavy Duty, Sling/Solid Seat/Back, Patient Weight Capacity 451 To 600 Pounds.
K0827	Power Wheelchair, Group 2 Very Heavy Duty, Captains Chair, Patient Weight Capacity 451 To 600 Pounds.
K0828	Power Wheelchair, Group 2 Extra Heavy Duty, Sling/Solid Seat/Back, Patient Weight Capacity 601 Pounds Or More.
K0829	Power Wheelchair, Group 2 Extra Heavy Duty, Captains Chair, Patient Weight Capacity 601 Pounds Or More.
K0835	Power Wheelchair, Group 2 Standard, Single Power Option, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0836	Power Wheelchair, Group 2 Standard, Single Power Option, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0837	Power Wheelchair, Group 2 Heavy Duty, Single Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 301 To 450 Pounds.
K0838	Power Wheelchair, Group 2 Heavy Duty, Single Power Option, Captains Chair, Patient Weight Capacity 301 To 450 Pounds.
K0839	Power Wheelchair, Group 2 Very Heavy Duty, Single Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 451 To 600 Pounds.
K0840	Power Wheelchair, Group 2 Extra Heavy Duty, Single Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 601 Pounds Or More.
K0841	Power Wheelchair, Group 2 Standard, Multiple Power Option, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0842	Power Wheelchair, Group 2 Standard, Multiple Power Option, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0843	Power Wheelchair, Group 2 Heavy Duty, Multiple Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 301 To 450 Pounds.
K0848	Power Wheelchair, Group 3 Standard, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0849	Power Wheelchair, Group 3 Standard, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0850	Power Wheelchair, Group 3 Heavy Duty, Sling/Solid Seat/Back, Patient Weight Capacity 301 To 450 Pounds.
K0851	Power Wheelchair, Group 3 Heavy Duty, Captains Chair, Patient Weight Capacity 301 To 450 Pounds.
K0852	Power Wheelchair, Group 3 Very Heavy Duty, Sling/Solid Seat/Back, Patient Weight Capacity 451 To 600 Pounds.
K0853	Power Wheelchair, Group 3 Very Heavy Duty, Captains Chair, Patient Weight Capacity, 451 To 600 Pounds.
K0854	Power Wheelchair, Group 3 Extra Heavy Duty, Sling/Solid Seat/Back, Patient Weight Capacity 601 Pounds Or More.
K0855	Power Wheelchair, Group 3 Extra Heavy Duty, Captains Chair, Patient Weight Capacity 601 Pounds Or More.
K0856	Power Wheelchair, Group 3 Standard, Single Power Option, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0857	Power Wheelchair, Group 3 Standard, Single Power Option, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0858	Power Wheelchair, Group 3 Heavy Duty, Single Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 301 To 450 Pounds.
K0859	Power Wheelchair, Group 3 Heavy Duty, Single Power Option, Captains Chair, Patient Weight Capacity 301 To 450 Pounds.
K0860	Power Wheelchair, Group 3 Very Heavy Duty, Single Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 451 To 600 Pounds.
K0861	Power Wheelchair, Group 3 Standard, Multiple Power Option, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0862	Power Wheelchair, Group 3 Heavy Duty, Multiple Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 301 To 450 Pounds.
K0863	Power Wheelchair, Group 3 Very Heavy Duty, Multiple Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 451 To 600 Pounds.
K0864	Power Wheelchair, Group 3 Extra Heavy Duty, Multiple Power Option, Sling/Solid Seat/Back, Patient Weight Capacity 601 Pounds Or More.

TABLE 4—NON-STATUTORILY REQUIRED DMEPOS ITEMS

HCPCS	Description
E0748	Osteogenesis Stimulator, Electrical, Non-Invasive, Spinal Applications.
L0648	Lumbar-Sacral Orthosis, Sagittal Control, With Rigid Anterior And Posterior Panels, Posterior Extends From Sacrococcygeal Junction To T–9 Vertebra, Produces Intracavitary Pressure To Reduce Load On The Intervertebral Discs, Includes Straps, Closures, May Include Padding, Shoulder Straps, Pendulous Abdomen Design, Prefabricated, Off-The-Shelf.
L0650	Lumbar-Sacral Orthosis, Sagittal-Coronal Control, With Rigid Anterior And Posterior Frame/Panel(S), Posterior Extends From Sacrococcygeal Junction To T–9 Vertebra, Lateral Strength Provided By Rigid Lateral Frame/Panel(S), Produces Intracavitary Pressure To Reduce Load On Intervertebral Discs, Includes Straps, Closures, May Include Padding, Shoulder Straps, Pendulous Abdomen Design, Prefabricated, Off-The-Shelf.
L1832	Knee Orthosis, Adjustable Knee Joints (Unicentric Or Polycentric), Positional Orthosis, Rigid Support, Prefabricated Item That Has Been Trimmed, Bent, Molded, Assembled, Or Otherwise Customized To Fit A Specific Patient By An Individual With Expertise.
L1833	Knee Orthosis, Adjustable Knee Joints (Unicentric Or Polycentric), Positional Orthosis, Rigid Support, Prefabricated, Off-The Shelf.
L1851	Knee Orthosis (KO), Single Upright, Thigh And Calf, With Adjustable Flexion And Extension Joint (Unicentric Or Polycentric), Medial-Lateral And Rotation Control, With Or Without Varus/Valgus Adjustment, Prefabricated, Off-The-Shelf.
L3960	Shoulder Elbow Wrist Hand Orthosis, Abduction Positioning, Airplane Design, Prefabricated, Includes Fitting And Adjustment.

As previously stated, PMDs are included on the Required Face-to-Face Encounter and Written Order Prior to Delivery List per statutory obligation. For the other DMEPOS items, we considered factors such as operational limitations, item utilization, acute needs, pandemic impacts, cost-benefit analysis (for example, comparing the cost of review versus the anticipated amount of improper payment identified), emerging trends (for example, billing patterns, medical review findings), vulnerabilities identified in official agency reports, or other analysis.

In selecting these items, we must balance our program integrity goals with the needs of patients, particularly those in need of medical devices to assist with functional activities and ambulation within their home. In other words, we must ensure the appropriate application and oversight of the face-to-face encounter requirements. In consideration of access issues, we note that the regulation 42 CFR 410.38 allows

for use of telehealth, as defined in 42 CFR 410.78 and 414.65, when appropriate to meet our coverage requirements for beneficiaries.

We also believe transparency and education will aid in compliance with these payment requirements and continued access. As such, we will make information widely available to the public at appropriate literacy levels regarding face-to-face encounter requirements, prior authorization, and necessary documentation for items on Required Face-to-Face Encounter and Written Order Prior to Delivery and Prior Authorization Lists.

We believe additional practitioner oversight of beneficiaries in need of items represented by these HCPCS codes will help further our program integrity goals of reducing fraud, waste, and abuse. It will also help ensure beneficiary receipt of items specific to their medical needs. For items on the Required Face-to-Face Encounter and Written Order Prior to Delivery List (Tables 3 and 4), the written order/prescription must be communicated to the supplier prior to delivery. For such items, we require the treating practitioner to have a face-to-face encounter with the beneficiary within the 6 months preceding the date of the written order/prescription. If the face-to-face encounter is a telehealth encounter, the requirements of 42 CFR 410.78 and 414.65 must be met for DMEPOS coverage purposes.

Consistent with § 410.38(d), the face-to-face encounter must be documented in the pertinent portion of the medical record (for example, history, physical examination, diagnostic tests, summary of findings, progress notes, treatment plans or other sources of information that may be appropriate). The supporting documentation must include subjective and objective beneficiary specific information used for diagnosing, treating, or managing a clinical condition for which the DMEPOS item(s) is ordered. Upon request by CMS or its review contractors, a supplier must submit additional documentation to support and substantiate the medical necessity for the DMEPOS item or both.

The Required Face-to-Face Encounter and Written Order Prior to Delivery List is available on the following CMS website: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/FacetoFaceEncounterRequirementforCertainDurableMedicalEquipment.*

C. Items Subject to Prior Authorization Requirements

The November 8, 2019 final rule (84 FR 60648) maintained the process established in the December 30, 2015 final rule (80 FR 81674) that when items are placed on the Required Prior Authorization List, we would inform the public of those DMEPOS items on the Required Prior Authorization List in the **Federal Register** with no less than 60 days' notice before implementation, and post notification on the CMS website.

The Required Prior Authorization List specified in § 414.234(c)(1) is selected from the Master List (as described in § 414.234(b)), and those selected items require prior authorization as a condition of payment. Additionally, § 414.234 (c)(1)(ii) states that CMS may elect to limit the prior authorization requirement to a particular region of the country if claims data analysis shows that unnecessary utilization of the selected item(s) is concentrated in a particular region.

The purpose of this document is to inform the public that we are updating the Required Prior Authorization List to include six additional Power Mobility Devices (PMDs) and five additional Orthoses HCPCS codes. To assist stakeholders in preparing for implementation of the prior authorization program, we are providing 90 days' notice.

The following six HCPCS codes for PMDs and five HCPCS codes for Orthoses are added to the Required Prior Authorization List:

TABLE 5—ADDITIONS TO THE REQUIRED PRIOR AUTHORIZATION LIST

HCPCS	Description
K0800	Power operated vehicle, group 1 standard, patient weight capacity up to and including 300 pounds.
K0801	Power Operated Vehicle, Group 1 Heavy Duty, Patient Weight Capacity, 301 To 450 Pounds.
K0802	Power Operated Vehicle, Group 1 Very Heavy Duty, Patient Weight Capacity 451 To 600 Pounds.
K0806	Power Operated Vehicle, Group 2 Standard, Patient Weight Capacity Up To And Including 300 Pounds.
K0807	Power Operated Vehicle, Group 2 Heavy Duty, Patient Weight Capacity 301 To 450 Pounds.
K0808	Power Operated Vehicle, Group 2 Very Heavy Duty, Patient Weight Capacity 451 To 600 Pounds.
L0648	Lumbar-Sacral Orthosis, Sagittal Control, With Rigid Anterior And Posterior Panels, Posterior Extends From Sacrococcygeal Junction To T–9 Vertebra, Produces Intracavitary Pressure To Reduce Load On The Intervertebral Discs, Includes Straps, Closures, May Include Padding, Shoulder Straps, Pendulous Abdomen Design, Prefabricated, Off-The-Shelf.
L0650	Lumbar-Sacral Orthosis, Sagittal-Coronal Control, With Rigid Anterior And Posterior Frame/Panel(S), Posterior Extends From Sacrococcygeal Junction To T–9 Vertebra, Lateral Strength Provided By Rigid Lateral Frame/Panel(S), Produces Intracavitary Pressure To Reduce Load On Intervertebral Discs, Includes Straps, Closures, May Include Padding, Shoulder Straps, Pendulous Abdomen Design, Prefabricated, Off-The-Shelf.
L1832	Knee Orthosis, Adjustable Knee Joints (Unicentric Or Polycentric), Positional Orthosis, Rigid Support, Prefabricated Item That Has Been Trimmed, Bent, Molded, Assembled, Or Otherwise Customized To Fit A Specific Patient By An Individual With Expertise.
L1833	Knee Orthosis, Adjustable Knee Joints (Unicentric Or Polycentric), Positional Orthosis, Rigid Support, Prefabricated, Off-The Shelf.
L1851	Knee Orthosis (Ko), Single Upright, Thigh And Calf, With Adjustable Flexion And Extension Joint (Unicentric Or Polycentric), Medial-Lateral And Rotation Control, With Or Without Varus/Valgus Adjustment, Prefabricated, Off-The-Shelf.

We believe prior authorization of these six additional HCPCS codes for PMDs and five HCPCS codes for Orthoses will help further our program integrity goals of reducing fraud, waste, and abuse, while also protecting access to care. For PMDs, the OIG has previously reported that Medicare has inappropriately paid for items that did not meet certain Medicare requirements.[2] Lower limb orthoses (LLO) and lumbar-sacral orthoses (LSO) have been identified by CMS' Comprehensive Error Rate Testing (CERT) program as two of the top 20 DMEPOS service types with improper payments over the past several years. Since 2016, LLOs have had an improper payment rate above 60 percent, with projected improper payments ranging between $235 and $501 million. Similarly, LSOs have had an improper payment rate above 32 percent, with projected improper payments ranging between $116 and $177 million, since 2016. Additionally, in 2019, the Department of Justice (DOJ) announced

[2] OIG Report A–09–12–02068—Medicare Paid Suppliers For Power Mobility Device Claims That Did Not Meet Federal Requirements For Physicians' Face-To-Face Examinations Of Beneficiaries (January 2015): *https://oig.hhs.gov/oas/reports/region9/91202068.pdf.*

federal indictments and law enforcement actions stemming from fraudulent claims submitted for medically unnecessary back, shoulder, wrist, and knee braces. Administrative actions were taken against 130 DMEPOS companies that were enticing Medicare beneficiaries with offers of low or no-cost orthotic braces. The investigation found that some DME companies and licensed medical professionals allegedly participated in health care fraud schemes involving more than $1.2 billion in loss.[3]

These codes will be subject to the requirements of the prior authorization program for certain DMEPOS items as outlined in § 414.234. We will implement a prior authorization program for the six newly added codes for PMDs nationwide and five newly added codes for Orthoses in 3 phases. This phased-in approach will allow us to identify and resolve any unforeseen issues by using a smaller claim volume in phase one before implementing phases 2 and 3. State selection for the three phases was completed based on utilization data for the items selected.

- For phase 1, which begins on the date specified in the **DATES** section, we selected the State in each DME MAC jurisdiction with the highest utilization: New York, Illinois, Florida, and California.
- For phase 2, which begins on the date specified in the **DATES** section of this document, we selected the next three States with the highest utilization in each DME MAC jurisdiction: Maryland, Pennsylvania, New Jersey, Michigan, Ohio, Kentucky, Texas, North Carolina, Georgia, Missouri, Arizona, and Washington.
- For phase 3, which begins on the date specified in the **DATES** section of this document, prior authorization expands to all remaining States and territories not captured in phases 1 and 2.

The prior authorization program for the 51 codes currently subject to the DMEPOS prior authorization requirement will continue uninterrupted.

Prior to providing an item on the Required Prior Authorization List to the beneficiary and submitting the claim for processing, a requester must submit a prior authorization request. The request must include evidence that the item complies with all applicable Medicare coverage, coding, and payment rules. Consistent with § 414.234(d), such evidence must include the written order/prescription, relevant information from the beneficiary's medical record, and relevant supplier-produced documentation. After receipt of all applicable required Medicare documentation, CMS or one of its review contractors will conduct a medical review and communicate a decision that provisionally affirms or non-affirms the request.

We will issue specific prior authorization guidance for these additional items in subregulatory communications, including final timelines customized for the DMEPOS item subject to prior authorization, for communicating a provisionally affirmed or non-affirmed decision to the requester. In the December 30, 2015 final rule (80 FR 81674) we stated that this approach to final timelines provides flexibility to develop a process that involves fewer days, as may be appropriate, and allows us to safeguard beneficiary access to care. If at any time we become aware that the prior authorization process is creating barriers to care, we can suspend the program. For example, we will review questions and complaints from consumers and providers that come through regular sources such as 1–800–Medicare.

The updated Required Prior Authorization List is available in the download section of the following CMS website: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/DMEPOS/Downloads/DMEPOS_PA_Required-Prior-Authorization-List.pdf.*

III. Collection of Information Requirements

This document provides updates to the Master List and announces the selection of HCPCS codes to be placed on the Required Face-to-Face Encounter and Written Order Prior to Delivery List and Required Prior Authorization List.

Additionally, this document announces the continuation of prior authorization for 51 HCPCS codes, and the addition of six HCPCS codes for PMDs and five HCPCS codes for Orthoses on the Required Prior Authorization List. There is an information collection burden associated with this program that is currently approved under OMB control number 0938–1293, which expires March 31, 2022. This package accounts for burdens associated with the addition of items to the Required Prior Authorization Lists and assumes a burden for 2021 of approximately $10 million for providers to comply with the required information collection. We will reassess this burden soon and will seek comment on our assessment in a **Federal Register** notice as required under the Paperwork Reduction Act of 1995.

IV. Regulatory Impact Statement

We have examined the impact of this regulatory document as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A Regulatory Impact Analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with economically significant effects ($100 million or more in any 1 year). This regulatory document is not significant and does not reach the economic threshold and thus is not considered a major regulatory document. Per our analysis, the additional items being added to the prior authorization program (excluding PMDs)[4] have an estimated net savings of $14.8 million. Gross savings is based upon a 10 percent reduction in the total amount paid for claims in Calendar Year 2019. We deducted from the gross savings the anticipated cost for performing the prior authorization reviews in order to estimate the net savings. Our gross savings estimate of 10 percent is based on previous results from other prior authorization programs,

[3] Federal Indictments & Law Enforcement Actions in One of the Largest Health Care Fraud Schemes Involving Telemedicine and Durable Medical Equipment Marketing Executives Results in Charges Against 24 Individuals Responsible for Over $1.2 Billion in Losses (April 9, 2019): *https://www.justice.gov/opa/pr/federal-indictments-and-law-enforcement-actions-one-largest-health-care-fraud-schemes.*

[4] The additional PMD codes that will be added were not included in the data analysis because PMD codes are already part of a successful prior authorization program. Since some PMDs are already subject to prior authorization, other PMDs may demonstrate billing shifts across the policy groups, and as such, savings are more difficult to accurately forecast and may be less identifiable.

including prior authorization of other DMEPOS items.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $8.0 million to $41.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this regulatory document will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this regulatory document will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately $158 million. This regulatory document will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule or other regulatory document) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulatory document does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this document was reviewed by the Office of Management and Budget.

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: January 10, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–00572 Filed 1–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 416, 419, and 512

Office of the Secretary

45 CFR Part 180

[CMS–1753–CN]

RIN 0938–AU43

Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule with comment period; correction.

SUMMARY: This document corrects technical errors in the final rule with comment period that appeared in the **Federal Register** on November 16, 2021, titled ''Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model.''

DATES:

Effective date: Effective January 13, 2022.

Applicability date: The corrections in this correcting document are applicable beginning January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Marjorie Baldo via email *Marjorie.Baldo@cms.hhs.gov* or at (410) 786–4617.

SUPPLEMENTARY INFORMATION:

I. Background

In the final rule with comment period that appeared in the November 16, 2021, **Federal Register** (86 FR 63458) titled ''Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model'' (hereinafter referred to as the CY 2022 OPPS/ASC final rule with comment period), there were a number of technical and typographical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the document that appeared in the November 16, 2021 **Federal Register**. Accordingly, the corrections are effective January 1, 2022.

II. Summary of Errors

A. Summary of Errors in the Preamble

1. Hospital Outpatient Prospective Payment System (OPPS) Corrections

On page 63463, use of incorrect wage index assignments for community mental health centers (CMHCs) resulted in an inaccurate payment impact estimate. We stated that ''we estimate a 1.1 percent increase in CY 2022 payments to CMHCs relative to their CY 2021 payments.'' We are correcting our estimate of the increase in payments for CMHCs from ''1.1 percent'' to ''1.6 percent''.

On page 63490, we noted that one commenter, a hospital association, supported CMS's proposal to continue to unpackage Omidria in the ASC setting. However, there were several commenters, including several hospital associations, that expressed broad support for CMS's proposal to unpackage and pay separately for non-opioid pain management drugs that function as surgical supplies, including the drug Omidria. We are correcting the text to acknowledge the additional commenters.

On page 63497, the table number for the table included on this page was inadvertently omitted from the table's title. Therefore, we are adding the number ''4'' to the table's title.

On page 63543 and 63544, we listed the incorrect APC assignment for CPT codes 66989 and 66991. We are correcting the APC assignment for these codes from APC 1526 to APC 1563.

On page 63548, second column, under section ''6. Calculus Aspiration With Lithotripsy Procedure (APC 5376)'' of the APC-Specific section, we are correcting the long descriptor for

HCPCS code C9761, to include the terms ''ureter,'' ''bladder,'' or ''steerable''. The correct long descriptor for HCPCS code C9761 is ''Cystourethroscopy, with ureteroscopy and/or pyeloscopy, with lithotripsy, and ureteral catheterization for steerable vacuum aspiration of the kidney, collecting system, ureter, bladder, and urethra if applicable''.

On page 63549, in Table 23: Final SI And APC Assignment For HCPCS Code C9761, we inadvertently used the incorrect long descriptor for HCPCS code C9761. We are correcting the long descriptor for HCPCS code C9761 from ''Cystourethroscopy, with ureteroscopy and/or pyeloscopy, with lithotripsy (ureteral catheterization is included) and vacuum aspiration of the kidney, collecting system and urethra if applicable)'' to ''Cystourethroscopy, with ureteroscopy and/or pyeloscopy, with lithotripsy, and ureteral catheterization for steerable vacuum aspiration of the kidney, collecting system, ureter, bladder, and urethra if applicable''.

On page 63565, we inadvertently omitted the HOP Panel recommendation related to CPT code 55880. Therefore, we are adding the language that describes the HOP Panel's recommendation for this code.

On page 63569, we inadvertently omitted a summary of several public comments and our responses related to the appropriate APC assignments for CPT codes 0652T, 0653T, and 0654T. Therefore, we are adding a new subsection titled ''38. Other Procedures/Services'' that includes the comments and our response.

On page 63633, Table 39, ''Drugs and Biologicals with Pass-Through Payment Status Expiring after CY 2022,'' we inadvertently used the wrong dosage unit in the long descriptor for HCPCS code J9272. The correct dosage unit is ''10 mg,'' not ''100 mg''. Therefore, we are changing the dosage unit in the long descriptor for HCPCS code J9272 from ''100 mg'' to ''10 mg.''

On page 63634, Table 39, ''Drugs and Biologicals with Pass-Through Payment Status Expiring after CY 2022,'' we inadvertently excluded HCPCS code J9021 (Injection, asparaginase, recombinant, (rylaze), 0.1 mg), even though it is a drug with pass-through status expiring after CY 2022. Therefore, we are adding an entry for HCPCS code J9021 that includes the long descriptor, status indicator, APC assignment, and the pass-through eligibility period for the drug described by HCPCS code J9021.

On pages 63812 and 63980, our revisions to the device offset percentages for certain device-intensive procedures results in a revised ASC weight scalar. Therefore, we are revising our ASC weight scalar from 0.8552 to 0.8546.

On pages 63978 and 63979, Table 84, ''Estimated Impact of the CY 2022 Changes for the Hospital Outpatient Prospective Payment System'', use of incorrect wage index assignments for CMHCs resulted in inaccurate payment impact estimates in the table. We are making changes in the descriptive text to accurately reflect those updates. In addition, the row for CMHCs of the Table 84 is being corrected to include payment impact estimates based on the correct CMHC wage index assignments.

2. Hospital Outpatient Quality Reporting (OQR) Program Corrections

On page 63845, the title of section ''b'' incorrectly states: ''Beginning With the CY 2023 Reporting Period/CY 2025 Payment Determination.'' We are correcting this from ''CY 2023 Reporting Period/CY 2025 Payment Determination'' to ''CY 2025 Reporting Period/CY 2027 Payment Determination.''

On page 63847, in the footnote for the OP–31 measure in table 63, we stated the incorrect timeline for mandatory reporting of the OP–31 measure. We are correcting this from ''CY 2023 reporting period/CY 2025 payment determination'' to ''CY 2025 reporting period/CY 2027 payment determination.''

On page 63849, in Table 65, we omitted a footnote for the OP–31 measure. We are adding the following footnote: ''OP–31 measure is voluntarily collected as set forth in the CY 2015 OPPS/ASC final rule with comment period (79 FR 66946 through 66947).''

3. Ambulatory Surgical Center Quality Reporting Program (ASCQR) Corrections

On page 63892, in Table 69, the footnote for the ASC–20 measure is incorrect. We are removing this incorrect footnote from the table.

On page 63894, in Table 71, we omitted the ASC–15 measure from the table. We are adding the ASC–15 measure to the list of measures in Table 71 by adding the following to the list of measures in the table: ASC–15a—About Facilities and Staff, ASC–15b—Communication About Procedure, ASC–15c—Preparation for Discharge and Recovery, ASC–15d—Overall Rating of Facility, ASC–15e—Recommendation of Facility. We are also adding the following footnotes to the ASC–15 a–e measure: ''The ASC–15 measure is voluntarily collected effective beginning with the CY 2026 payment determination and mandatory beginning with the CY 2027 payment determination and subsequent years, as set forth in the CY 2022 OPPS/ASC final rule with comment period (86 FR 63887 through 63892).''

4. Radiation Oncology Model Corrections

On page 63917, we inadvertently omitted the word ''be'' in a sentence. We are correcting that omission by inserting the word. In addition, we are revising a sentence to correct the word ''of'' to read ''at''.

On page 63937, we repeated the term ''RO''. We are removing one instance to correct this error.

On page 63940, we inadvertently omitted a period at the end of a sentence. We are correcting this omission by adding in the period.

On page 63987, in Table 91, ''Estimates of Medicare Program Savings (Millions $) for Radiation Oncology Model (Starting January 1, 2022),'' we are correcting the Part B Premium Revenue Offset total from ''50'' to ''40''.

B. Summary of Errors and Corrections to the OPPS and ASC Addenda Posted on the CMS Website

1. OPPS Addenda Posted on the CMS Website

a. Corrections to Addendum A

In Addendum A (OPPS APCs for CY 2022), we inadvertently assigned OPPS status indicator ''K'' rather than ''G'' to the drug APCs listed below, even though we used our equitable adjustment authority to mimic continued pass-through status through the end of CY 2022 for the drugs assigned to these APCs. Accordingly, we are correcting the OPPS status indicator from SI ''K'' to ''G'' in Addendum A for the drug APCs listed below.

- APC 9339 (Iodine i-131 iobenguane 1mci)
- APC 9180 (Inj., patisiran, 0.1 mg)
- APC 9183 (Inj., plazomicin, 5 mg)
- APC 9179 (Inj., aristada initio, 1 mg)
- APC 9182 (Inj mogamulizumab-kpkc, 1 mg)

We inadvertently assigned HCPCS code J2798 status indicator ''N'', meaning that payment for the item or service is packaged, even though this drug will receive continued separate payment to mimic pass-through status during CY 2022. Accordingly, we are assigning HCPCS code J2798 to APC 9181 (Inj., perseris, 0.5 mg) and adding this APC to Addendum A with an OPPS status indicator assignment of ''G'', a payment rate of $10.677, and a minimum unadjusted copayment of $2.14.

b. Corrections to Addendum B

In Addendum B (OPPS Payment by HCPCS Code for CY 2022), we inadvertently assigned OPPS status indicator ''K'' or ''N'' rather than ''G'' and assigned comment indicator ''CH'' to the HCPCS codes for the drugs listed below, even though we used our equitable adjustment authority to mimic continued pass-through status through the end of CY 2022 for these drugs and the OPPS status indicator and APC assignments for these drugs are not changing. Accordingly, we changed the status indicator from SI ''K'' or ''N'' to ''G'' for the drug HCPCS codes listed below. We also removed comment indicator ''CH'' from these HCPCS codes because there is no change to the SI or APC assignment from CY 2021.

- A9590 (Iodine i-131 iobenguane 1mci)
- J0222 (Inj., patisiran, 0.1 mg)
- J0291 (Inj., plazomicin, 5 mg)
- J1943 (Inj., aristada initio, 1 mg)
- J9204 (Inj mogamulizumab-kpkc, 1 mg)
- J2798 (Inj., perseris, 0.5 mg)

In Addendum B, we inadvertently assigned HCPCS code J2798 status indicator ''N'', meaning that payment for the item or service is packaged, even though this drug will receive continued separate payment to mimic pass-through status during CY 2022. We are correcting this error in Addendum B by indicating that this HCPCS code is assigned to APC 9181 (Inj., perseris, 0.5 mg) with a status indicator assignment of ''G'', a payment rate of $10.677, and a minimum unadjusted copayment of $2.14.

In Addendum B, we inadvertently assigned HCPCS codes 66989 and 66991 to APC 1526 and status indicator ''S''. We are correcting this error in Addendum B by indicating that HCPCS codes 66989 and 66991 are assigned to APC 1563 with a status indicator of ''T''.

In Addendum B, we inadvertently assigned new HCPCS code A2003 to status indicator ''A''. Since this code was created in error, we are deleting this code from Addendum B.

c. Corrections to Addendum C

In Addendum C, we inadvertently assigned CPT codes 66989 and 66991 to APC 1526 and status indicator ''S''. Accordingly, we are correcting the APC assignment from 1526 to 1563 and status indicator ''T''.

In Addendum C (HCPCS Codes Payable Under the 2022 OPPS by APC), we inadvertently assigned OPPS status indicator ''K'' rather than ''G'' to the drug APCs listed below, even though we used our equitable adjustment authority to mimic continued pass-through status through the end of CY 2022 for the drugs assigned to these APCs. Accordingly, we are correcting the OPPS status indicator from SI ''K'' to ''G'' in Addendum C for the HCPCS codes and drug APCs listed below.

- HCPCS code A9590; APC 9339 (Iodine i-131 iobenguane 1mci)
- HCPCS code J0222; APC 9180 (Inj., patisiran, 0.1 mg)
- HCPCS code J0291; APC 9183 (Inj., plazomicin, 5 mg)
- HCPCS code J1943; APC 9179 (Inj., aristada initio, 1 mg)
- HCPCS code J9204; APC 9182 (Inj mogamulizumab-kpkc, 1 mg)

We inadvertently assigned HCPCS code J2798 status indicator ''N'', meaning that payment for the item or service is packaged, even though this drug will receive continued separate payment to mimic pass-through status during CY 2022. We are correcting this error by assigning HCPCS code J2798 (Inj., perseris, 0.5 mg) to APC 9181 (Inj., perseris, 0.5 mg) and adding this APC to Addendum C with status indicator assignment of ''G'', a payment rate of $10.677, and the minimum unadjusted copayment of $2.14.

d. Corrections to Addendum P

In Addendum P of the OPPS/ASC proposed rule, we applied a 31 percent device offset percentage to CPT code 0618T and HCPCS code C9761. In Addendum P to the CY 2022 OPPS/ASC final rule with comment period, we assigned device offset percentages of 1.9 percent for CPT code 0618T and 5.15 percent for HCPCS code C9761. We are correcting the device offset percentages in Addendum P to display the 31 percent default device offset percentage as was displayed in the CY 2022 OPPS/ASC proposed rule Addendum P for the CPT/HCPCS codes below.

- CPT code 0618T (Insertion of iris prosthesis, including suture fixation and repair or removal of iris, when performed; with secondary intraocular lens placement or intraocular lens exchange);
- HCPCS code C9761 (Cystourethroscopy, with ureteroscopy and/or pyeloscopy, with lithotripsy (ureteral catheterization is included) and vacuum aspiration of the kidney, collecting system and urethra if applicable).

The impact file provided with the CY 2022 OPPS/ASC final rule with comment period at *https://www.cms.gov/medicaremedicare-fee-service-paymenthospitaloutpatientpps/cms-1753-fc* utilized the incorrect wage index values in Column F of ''2022 NFRM Impact File.11012021.xlsx'' for certain CMHCs, providers affected by the imputed rural floor, and providers affected by the cap on wage index decreases. These corrections to the wage index have effects on estimated CY 2022 OPPS and OPPS Outlier Payment, which were displayed in Columns M and N of that same file. As a result, we are updating the impact file to provide corrected numbers, which will have corrected values in those same columns in the updated impact file.

To view the corrected CY 2022 OPPS status indicators, APC assignments, relative weights, copayment rates, device-intensive status, and short descriptors for Addenda A, B, and C that resulted from these technical corrections, we refer readers to the Addenda and supporting files that are posted on the CMS website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Hospital-Outpatient-Regulations-and-Notices.* Select ''CMS–1753–CN'' from the list of regulations. All corrected Addenda for this correcting document are contained in the zipped folder titled ''2022 CN OPPS Addenda'' at the bottom of the page for CMS–1753–CN.

2. ASC Payment System Addenda Posted on the CMS Website

In ASC Addendum AA, we inadvertently assigned CPT codes 66989 and 66991 ''N'' (No) in column D (Subject to Multiple Procedure Discounting). We are correcting this error in Addendum AA by revising the procedure discounting status from ''N'' (No) to ''Y'' (Yes), indicating that the procedure is subject to multiple procedure discounting.

In ASC Addendum AA, we inadvertently assigned CPT codes C9779 and C9780 payment indicator ''J8'' (Device-intensive procedure; paid at adjusted rate) in column F (Final CY 2022 Payment Indicator) even though these procedures are not payable in the ASC setting. We are correcting this error in Addendum AA by removing these codes from Addendum AA.

In ASC Addendum AA, we inadvertently assigned CPT code 0414T payment indicator ''G2'' (Non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight) in column F (Final CY 2022 Payment Indicator), but this procedure is designated as device-intensive under the OPPS. Therefore, we are correcting this error by assigning payment indicator ''J8'' to CPT code 0414T and correcting the ASC payment rate and ASC relative weight to reflect a 31 percent device offset percentage.

In Addendum AA of the OPPS/ASC proposed rule, we applied a 31 percent device offset percentage to CPT codes 66987 and 66988 and HCPCS code C9757 and assigned a ''J8'' payment indicator—Device-intensive procedure; paid at adjusted rate.—and a payment rate that reflected a 31 percent default device offset percentage. We changed the ASC payment rates in the CY 2022 OPPS/ASC final rule with comment period Addendum AA and device offset percentages in Addendum FF to reflect 11.27 percent for CPT code 66987, 12.35 percent for 66988, and 22.14 percent for HCPCS code C9757. In ASC Addendum AA, we are correcting the payment indicator for CPT codes 66987 and 66988 and HCPCS code C9757 to ''J8'' and revising the ASC payment rate and ASC relative weights to reflect a device offset percentage of 31 percent as was displayed in the CY 2022 OPPS/ASC proposed rule. In ASC Addendum FF, we are correcting the device offset percentages for CPT codes 66987 and 66988 and HCPCS code C9757 to reflect the device offset percentage of 31 percent as was displayed in the CY 2022 OPPS/ASC proposed rule.

In ASC addendum BB, we inadvertently assigned HCPCS code J2798 payment indicator ''N1'', meaning that payment for the item or service is packaged, even though this drug will receive continued separate payment to mimic pass-through status during CY 2022. We are correcting this error in Addendum BB by changing the payment indicator from ''N1'' to ''K2'' and adding a payment rate of $10.68.

In ASC Addendum FF, we inadvertently added CPT codes C9779 and C9780 but these procedures are not payable in the ASC setting. We are correcting this error by removing these codes from Addendum FF.

In ASC Addendum FF, we inadvertently assigned CPT code 0414T payment indicator ''G2'' (non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight) under column D (Final CY 2022 Payment Indicator) and a device portion that reflects a device offset percentage of 27.06 percent but this procedure is designated as device-intensive under the OPPS. Therefore, we are correcting this error by assigning payment indicator ''J8'' (device-intensive procedure; paid at adjusted rate) to CPT code 0414T, assigning a 31 percent device offset percentage, and assigning a device portion of $7,233.62.

To view the corrected final CY 2022 ASC payment indicators, payment weights, payment rates, and multiple procedure discounting indicator for Addendum BB that resulted from this technical correction, we refer readers to the ASC Addenda and supporting files on the CMS website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Hospital-Outpatient-Regulations-and-Notices.* Select ''CMS–1753–CN'' from the list of regulations. The corrected ASC addenda for this correcting document are contained in the zipped folder titled ''2022 CN ASC Addenda'' at the bottom of the page for CMS–1753–CN.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date of the APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rulemaking that would be subject to the notice and comment and delayed effective date requirements. This correcting document corrects technical and typographical errors in the preamble, addenda, payment rates, and tables included or referenced in the CY 2022 OPPS/ASC final rule with comment period but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, the corrections made through this correcting document are intended to ensure that the information in the CY 2022 OPPS/ASC final rule with comment period accurately reflects the policies adopted in that rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2022 OPPS/ASC final rule with comment period reflects our policies as of the date they take effect and are applicable.

Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2022 OPPS/ASC final rule with comment period accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and delayed effective date requirements.

IV. Correction of Errors

In FR Doc. 2021–24011 of November 16, 2021 (86 FR 63458), we are making the following corrections:

1. On page 63463, second column, first full paragraph, line 9, ''1.1 percent'' is corrected to read ''1.6 percent''.

2. On page 63490, third column, third full paragraph, in lines 13 through 16, the text ''One commenter, a hospital association, also supported CMS's proposal to continue to unpackage Omidria in the ASC setting'' is corrected to read ''Several commenters, including several hospital associations and ophthalmology professional societies, also provided broad support for CMS's proposal to continue to unpackage Omidria in the ASC setting.''

3. On page 63497, the title of the table is corrected to read:

''**TABLE 4: SUMMARY OF PRODUCTS MEETING CMS'S CRITERIA FOR SEPARATE PAYMENT IN THE ASC SETTING UNDER THE NON-OPIOID PAIN MANAGEMENT DRUGS THAT FUNCTION AS A SURGICAL SUPPLY PACKAGING POLICY.**''

4. On page 63543, third column, second full paragraph, the text ''We believe that APC 1526 (New Technology—Level 26 ($4001–$4500)), with a payment rate of $4,250.50, most accurately accounts for the resources associated with furnishing MIGS'' is corrected to read ''We believe that APC 1563 (New Technology—Level 26 ($4001–$4500)), with a payment rate of $4,250.50, most accurately accounts for the resources associated with furnishing MIGS.''

5. On page 63544, first column, second paragraph, the sentence ''In summary, after consideration of the public comments, we are finalizing the reassignment of CPT codes 66989 and 66991 to APC 1526 and assignment of CPT code 0671T to APC 5491'' is corrected to read ''In summary, after consideration of the public comments, we are finalizing the reassignment of CPT codes 66989 and 66991 to APC 1563 and assignment of CPT code 0671T to APC 5491.''

6. On page 63548, second column, in the section titled ''6. Calculus Aspiration With Lithotripsy Procedure (APC 5376),'' the long descriptor for HCPCS code C9761, ''Cystourethroscopy, with ureteroscopy and/or pyeloscopy, with lithotripsy (ureteral catheterization is included) and vacuum aspiration of the kidney, collecting system and urethra if applicable,'' is corrected to read ''Cystourethroscopy, with ureteroscopy and/or pyeloscopy, with lithotripsy, and ureteral catheterization for steerable vacuum aspiration of the kidney, collecting system, ureter, bladder, and urethra if applicable.''

7. On page 63549, in ''Table 23: Final SI And APC Assignment For HCPCS Code C9761,'' the long descriptor for HCPCS C9761 is corrected to read ''Cystourethroscopy, with ureteroscopy and/or pyeloscopy, with lithotripsy, and ureteral catheterization for steerable vacuum aspiration of the kidney, collecting system, ureter, bladder, and urethra if applicable''.

8. On page 63565, third column, before the first full paragraph that reads ''In summary, after careful consideration of the public comments'' add the following text:

''In addition, at the August 23, 2021 HOP Panel Meeting, a presenter requested that we reassign CPT code 55880 to APC 5376. Based on the information presented, the HOP Panel recommended that CMS reassign CPT code 55880 to APC 5376 for CY 2022. However, as stated above, based on our analysis of the claims for this CY 2022 OPPS/ASC final rule with comment period, our data shows a geometric mean cost of approximately $5,708 for predecessor HCPCS code C9747 based on 279 single claims, which is more comparable to the geometric mean cost of about $4,299 for APC 5375, rather than the geometric mean cost of approximately $8,042 for APC 5376. Consequently, we are not accepting the APC Panel's recommendation to reassign CPT code 55880 to APC 5376.''

9. On page 63569, second column, after the first partial paragraph and before ''IV. OPPS Payment for Devices,'' add the following text:

''38. Other Procedures/Services

For CY 2022, we proposed to continue to assign the transnasal esophagogastroduodenoscopy (EGD) CPT codes 0652T (Esophagogastroduodenoscopy, flexible, transnasal; diagnostic, including collection of specimen(s) by brushing or washing, when performed (separate procedure)) and 0653T (Esophagogastroduodenoscopy, flexible, transnasal; with biopsy, single or multiple) to APC 5301 (Level 1 Upper GI Procedures) with a payment rate of $830.39. In addition, we proposed to assign CPT code 0654T (Esophagogastroduodenoscopy, flexible, transnasal; with insertion of intraluminal tube or catheter) to APC 5302 (Level 2 Upper GI Procedures) with a payment rate of $1,666.59.

Comment: Some commenters requested the reassignment of the transnasal EGD procedures to the next higher-level APCs within the Upper GI series. They stated that the costs for the surgical procedures are significantly different than the costs associated with the analogous transoral EGD CPT codes 43235, 43239, and 43241, which are assigned to the same corresponding APCs. Specifically, the commenters requested the reassignment of CPT codes 0652T and 0653T to APC 5302 (Level 2 Upper GI Procedures) with a payment rate of $1,666.59, and CPT code 0654T to APC 5303 (Level 3 Upper GI Procedures), with a payment rate of $3,160.76. The commenters explained that the surgical procedure associated with CPT codes 0652T through 0654T utilize a new transnasal single-use endoscopy system known as EvoEndo Model LE Single-Use Gastroscope, which has an estimated cost of about $1,500. They stated that the EvoEndo device is not paid separately as a transitional pass-through device because it is not described by HCPCS C1748 (Endoscope, single-use (*i.e.,* disposable), upper gi, imaging/illumination device (insertable)). The commenters stated that HCPCS C1748 was created for the EXALT Model D Single-Use Duodenoscope, which is used during endoscopic retrograde cholangiopancreatography (ERCP) procedures.

In addition, based on the cost of the EvoEndo device that is used in the procedure, the commenters agreed with the device-intensive assignment for the codes under the ASC payment system.

Response: Because the codes are new for CY 2021 and we have no claims data available for OPPS ratesetting, we believe that we should maintain the APC assignments for CPT codes 0652T and 0653T to APC 5301, and 0654T to APC 5302. However, once we have claims data, we will review the APC assignments and determine whether a change is necessary. We note that we review, on an annual basis, the APC assignments for all items and services paid under the OPPS. In addition, we thank the commenters for their input on the device-intensive status for the codes under the ASC payment system.

In summary, after consideration of the public comments, we are finalizing our proposal, without modifications. Specifically, we are assigning CPT codes 0652T and 0653T to APC 5301, and CPT code 0654T to APC 5302 for CY 2022. In addition, we are finalizing the device-intensive status for the codes for CY 2022. The final CY 2022 payment rates for the codes can be found in Addendum B to the CY 2022 OPPS/ASC final rule with comment period. We refer readers to Addendum D1 of this final rule with comment period for the status indicator (SI) meanings for all codes reported under the OPPS. Both Addendum B and D1 are available via the internet on the CMS website. Finally, for the final ASC Device Offset Percentages for CY 2022, we refer readers to ASC Addendum FF of this final rule with comment period.''

10. On page 63633, ''Table 39: Drugs and Biologicals with Pass-Through Payment Status Expiring after CY 2022,'' fourth row, third column titled ''Long Descriptor,'' the figure ''100 mg'' is corrected to read ''10 mg''.

11. On Page 63634, in ''Table 39: Drugs and Biologicals with Pass-Through Payment Status Expiring after CY 2022,'' at the end of the table, add the following row to read as follows:

N/A	J298	Injection, risperidone, (perseris), 0.5 mg	G	9181	10/01/2021	09/30/2024

12. On page 63812, the last sentence of the second column is corrected to read, ''Based on updated data for this final rule with comment period, the final CY 2022 ASC weight scalar is 0.8546.''

13. On page 63845, first column; under section ''b. OP–31: Cataracts,'' in lines 4–6, ''CY 2023 Reporting Period/CY 2025 Payment Determination'' is corrected to read ''CY 2025 Reporting Period/CY 2027 Payment Determination.''

14. On page 63847, Table 63, in the second footnote, the text ''CY 2023 reporting period/CY 2025 payment determination'' is corrected to read ''CY 2025 reporting period/CY 2027 payment determination''.

15. On page 63849, Table 65, add the footnote ''*** OP–31 measure is voluntarily collected as set forth in the CY 2015 OPPS/ASC final rule with comment period (79 FR 66946 through 66947).''

16. On page 63892, Table 69, remove the footnote ''** We note that, if adoption finalized, an ASC/measure number will be assigned for this measure in the final rule.''

17. On page 63894, Table 71 is revised to read as follows:

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Table 71: ASCQR Program Measure Set for the CY 2024 Reporting Period/CY 2026 Payment Determination and Subsequent Years

ASC #	NQF #	Measure Name
ASC-1	0263±	Patient Burn
ASC-2	0266±	Patient Fall
ASC-3	0267±	Wrong Site, Wrong Side, Wrong Patient, Wrong Procedure, Wrong Implant
ASC-4	0265±	All-Cause Hospital Transfer/Admission
ASC-9	0658	Endoscopy/Polyp Surveillance: Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients
ASC-11*	1536±	Cataracts: Improvement in Patient's Visual Function within 90 Days Following Cataract Surgery
ASC-12	2539	Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy
ASC-13	None	Normothermia Outcome
ASC-14	None	Unplanned Anterior Vitrectomy
ASC-15a**	None	About Facilities and Staff
ASC-15b**	None	Communication About Procedure
ASC-15c**	None	Preparation for Discharge and Recovery
ASC-15d**	None	Overall Rating of Facility
ASC-15e**	None	Recommendation of Facility
ASC-17	3470	Hospital Visits after Orthopedic Ambulatory Surgical Center Procedures
ASC-18	3366	Hospital Visits after Urology Ambulatory Surgical Center Procedures
ASC-19	3357	Facility-Level 7-Day Hospital Visits after General Surgery Procedures Performed at Ambulatory Surgical Centers
ASC-20	None	COVID-19 Vaccination Coverage Among Health Care Personnel

± NQF endorsement was removed.

* The ASC-11 measure voluntarily collected effective beginning with the CY 2017 payment determination as set forth in the CY 2015 OPPS/ASC final rule with comment period (79 FR 66984 through 66985).

**The ASC-15 measure is voluntarily collected effective beginning with the CY 2026 payment determination and mandatory beginning with the CY 2027 payment determination and subsequent years, as set forth in the CY 2022 OPPS/ASC final rule with comment period (86 FR 63887 through 63892).

17. On page 63917, second column, first full paragraph,

a. In lines 4–5, the word ''be'' is inserted between ''will'' and ''included''.

b. In line 18, the first instance of the word ''of'' is corrected to read ''at''.

18. On page 63937, first column, second partial paragraph, in line 23, remove the term ''RO'' between the words ''that'' and ''if''.

19. On page 63940, second column, first full paragraph, in line 12, insert a period between the words ''expires'' and ''CMS''.

20. On page 63978, in Table 84, ''Estimated Impact of the CY 2022 Changes for the Hospital Outpatient Prospective Payment System,'' the row for ''CMHCs'' is revised to read as follows:

CMHCs	39	0.4	-0.5	1.9	1.6

21. On page 63979,

a. First column,

1. First paragraph, in line 18, ''1.1 percent'' is corrected to read ''1.6 percent''.

2. Second paragraph,

a. In line 4, ''1.0 percent'' is corrected to read ''0.5 percent''.

b. In line 9, ''1.4 percent'' is corrected to read ''1.9 percent''.

c. In line 12, ''1.1 percent'' is corrected to read ''1.6 percent''.

22. On page 63980, first column, first paragraph, in line 10, ''0.8552'' is corrected to read ''0.8546''.

23. On page 63987, Table 91, ''Estimates of Medicare Program Savings (Millions $) for Radiation Oncology Model (Starting January 1, 2022),'' in the ''Total'' column, ''Part B Premium Revenue Offset'' line, the figure ''50'' is corrected to read ''40''.

Karuna Seshasai,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2022–00573 Filed 1–12–22; 8:45 am]

BILLING CODE 4120–01–C

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135–AA33

Civil Penalties Adjustment for 2022

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties (CMPs) that may be imposed for violations of the Program Fraud Civil Remedies Act (PFCRA) and the NEA's Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. This final rule provides the 2022 annual inflation adjustments to the initial ''catch-up'' adjustments made on June 15, 2017, and reflects all other inflation adjustments made in the interim.

DATES: This rule is effective January 13, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Fishman, Assistant General Counsel, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202–682–5418.

SUPPLEMENTARY INFORMATION:

1. Background

On December 12, 2017 the NEA issued a final rule entitled ''Federal Civil Penalties Adjustments'' [1] which finalized the NEA's June 15, 2017 interim final rule entitled ''Implementing the Federal Civil Penalties Adjustment Act Improvements Act'',[2] implementing the 2015 Act (section 701 of Pub. L. 114–74), which amended the Inflation Adjustment Act (28 U.S.C. 2461 note) requiring catch-up and annual adjustments to the NEA's CMPs. The 2015 Act requires agencies make annual adjustments to its CMPs for inflation.

A CMP is defined in the Inflation Adjustment Act as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

These annual inflation adjustments are based on the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, relative to the October CPI–U in the year of the previous adjustment. The formula for the amount of a CMP inflation adjustment is prescribed by law, as explained in OMB Memorandum M–16–06 (February 24, 2016), and therefore the amount of the adjustment is not subject to the exercise of discretion by the Chairman of the National Endowment for the Arts (Chairman).

The Office of Management and Budget has issued guidance on implementing and calculating the 2022 adjustment under the 2015 Act.[3] Per this guidance, the CPI–U adjustment multiplier for this annual adjustment is 1.06222. In its prior rules, the NEA identified two CMPs, which require adjustment: The penalty for false statements under the PFCRA and the penalty for violations of the NEA's Restrictions on Lobbying. With this rule, the NEA is adjusting the amount of those CMPs accordingly.

2. Dates of Applicability

The inflation adjustments contained in this rule shall apply to any violations assessed after January 15, 2022.

3. Adjustments

Two CMPs in NEA regulations require adjustment in accordance with the 2015 Act: (1) The penalty associated with the Program Fraud Civil Remedies Act (45 CFR 1149.9) and (2) the penalty associated with Restrictions on Lobbying (45 CFR 1158.400; 45 CFR part 1158, app. A).

A. Adjustments to Penalties Under the NEA's Program Fraud Civil Remedies Act Regulations.

The current maximum penalty under the PFCRA for false claims and statements is currently set at $11,802. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to

[1] 82 FR 58348.

[2] 82 FR 27431.

[3] OMB Memorandum M–22–07 (December 15, 2021).

the nearest dollar. Between October 2020 and October 2021, the CPI–U increased by a multiplier of 106.222. Therefore, the new post-adjustment maximum penalty under the PFCRA for false statements is $11,802 × 1.06222 = $12,536.32 which rounds to $12,536. Therefore, the maximum penalty under the PFCRA for false claims and statements will be $12,536.

B. Adjustments to Penalties Under the NEA's Restrictions on Lobbying Regulations

The penalty for violations of the Restrictions on Lobbying is currently set at a range of a minimum of $20,720 and a maximum of $207,314. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to the nearest dollar. Between October 2020 and October 2021, the CPI–U increased by a multiplier of 106.222. Therefore, the new post-adjustment minimum penalty under the Restrictions on Lobbying is $20,720 × 1.06222 = $22,009.20, which rounds to $22,009, and the maximum penalty under the Restrictions on Lobbying is $207,314 × 1.06222 = $220,213.08, which rounds to $220,213. Therefore, the range of penalties under the law on the Restrictions on Lobbying shall be between $22,009 and $220,213.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act requires agencies to provide an opportunity for notice and comment on rulemaking and also requires agencies to delay a rule's effective date for 30 days following the date of publication in the **Federal Register** unless an agency finds good cause to forgo these requirements. However, section 4(b)(2) of the 2015 Act requires agencies to adjust civil monetary penalties notwithstanding section 553 of the Administrative Procedure Act (APA) and publish annual inflation adjustments in the **Federal Register**. ''This means that the public procedure the APA generally requires . . . is not required for agencies to issue regulations implementing the annual adjustment.'' OMB Memorandum M–18–03.

Even if the 2015 Act did not except this final rule from section 553 of the APA, the NEA has good cause to dispense with notice and comment. Section 553(b)(B), authorizes agencies to dispense with notice and comment procedures for rulemaking if the agency finds good cause that notice and comment are impracticable, unnecessary, or contrary to public interest. The annual adjustments to civil penalties for inflation and the method of calculating those adjustments are established by section 5 of the 2015 Act, as amended, leaving no discretion for the NEA. Accordingly, public comment would be impracticable because the NEA would be unable to consider such comments in the rulemaking process.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only ''significant'' proposed and final rules are subject to review under this Executive Order. ''Significant,'' as used in E.O. 12866, means ''economically significant.'' It refers to rules with (1) an impact on the economy of $100 million; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change and OMB has not reviewed this final rule under E.O. 12866. The NEA has made the assessments required by E.O. 12866 and determined that this final rule: (1) Will not have an effect of $100 million or more on the economy; (2) will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (5) does not raise novel legal or policy issues.

Federalism (Executive Order 13132)

This final rule does not have federalism implications, as set forth in E.O. 13132. As used in this order, federalism implications mean ''substantial direct effects on the States, on the relationship between the [N]ational [G]overnment and the States, or on the distribution of power and responsibilities among the various levels of government.'' The NEA has determined that this final rule will not have federalism implications within the meaning of E.O. 13132.

Civil Justice Reform (Executive Order 12988)

This final rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Indian Tribal Governments (Executive Order 13175)

Under the criteria in E.O. 13175, the NEA has evaluated this final rule and determined that it would have no potential effects on Federally recognized Indian Tribes.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This final rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This final rule will not impose any ''information collection'' requirements under the Paperwork Reduction Act. Under the Act, information collection means the obtaining or disclosure of facts or opinions by or for an agency by 10 or more nonfederal persons.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104–4)

This final rule does not contain a Federal mandate that will result in 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.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

The final rule will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996 (Sec. 804, Pub. L. 104–121)

This final rule would not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible website. All information about the NEA required to be published in the **Federal Register** may be accessed at *https://www.arts.gov.* This Act also requires agencies to accept public comments on their rules ''by electronic means.'' See heading ''Public Participation'' for directions on electronic submission of public comments on this final rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The website *https://www.regulations.gov* contains electronic dockets for the NEA's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term ''plain writing'' means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this final rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this final rule on the Federal Plain Language Guidelines.

Public Participation (Executive Order 13563)

The NEA encourages public participation by ensuring its documentation is understandable by the general public, and has written this final rule in compliance with Executive Order 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility.

List of Subjects in 45 CFR Parts 1149 and 1158

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Lobbying, Penalties.

For the reasons stated in the preamble, the NEA amends 45 CFR chapter XI, subchapter B, as follows:

PART 1149—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 1. The authority citation for part 1149 continues to read as follows:

Authority: 5 U.S.C. App. 8G(a)(2); 20 U.S.C. 959; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

§ 1149.9 [Amended]

■ 2. Amend § 1149.9 in paragraph (a)(1) by removing ''$11,802'' and adding in its place ''$12,536''.

PART 1158—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1158 continues to read as follows:

Authority: 20 U.S.C. 959; 28 U.S.C. 2461; 31 U.S.C. 1352.

§ 1158.400 [Amended].

■ 4. Amend § 1158.400 in paragraphs (a), (b), and (e) by:

■ a. Removing ''$20,720'' and adding in its place ''$22,009'' each place it appears; and

■ b. Removing ''$207,314'' and adding in its place ''$220,213'' each place it appears.

Appendix A to Part 1158 [Amended]

■ 5. Amend appendix A to part 1158 by:

■ a. Removing ''$20,720'' and adding in its place ''$22,009'' each place it appears; and

■ b. Removing ''$207,314'' and adding in its place ''$220,213'' each place it appears.

Dated: January 10, 2022.

Meghan Jugder,

Support Services Specialist, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2022–00599 Filed 1–12–22; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Parts 326 and 352

[Docket No. O1–2012–0005]

RIN 0917–AA18

Acquisition Regulations: Buy Indian Act; Procedures for Contracting

AGENCY: Indian Health Service (IHS), Department of Health and Human Services HHS.

ACTION: Final rule.

SUMMARY: The Secretary of the Department of Health and Human Services (HHS) is finalizing regulations guiding implementation of the Buy Indian Act, which provides the Indian Health Service (IHS) with authority to set-aside procurement contracts for Indian-owned and controlled businesses. This rule supplements the Federal Acquisition Regulations (FAR) and the Department of Health and Human Services Acquisition Regulations (HHSAR).

DATES: This rule is effective March 14, 2022.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact: Carl Mitchell, Director, Division of Regulatory Policy Coordination (DRPC), Office of Management Services (OMS), IHS, 301–443–6384, *carl.mitchell@ihs.gov;* or Santiago Almaraz, Acting Director, OMS, IHS 301–443–4872, *santiago.almaraz@ihs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 2020 (85 FR 71596), IHS published a proposed rule entitled ''Acquisition Regulations; Buy Indian Act; Procedures for Contracting'' with a 60-day comment period.

IHS received comments from Tribes and Tribal entities requesting an extension of the comment period due to the encompassing of the holiday season during the original comment period, as well as the disproportionately high impact of the pandemic on Indian Country. The commenters felt both of these events delayed stakeholders from being able to perform a complete and full review of the proposed rule and provide comments within the initial 60-day comment period.

IHS concluded that it was reasonable to reopen and extend the comment period for an additional 60 days to allow any interested persons to submit comments on the proposed rule. On April 21, 2021, the IHS reopened and extended the comment period for 60

days with written or electronic comments on the proposed rule due by June 21, 2021.

I. Background
II. Statutory Authority
III. Overview of Final Rule
A. Numbering System
B. How This Rule Fits With the Indian Health Service and Department Acquisition Regulations
IV. Tribal Consultation
V. Development of Rule
A. Publication and Comment Solicitation
B. Summary of Comments
VI. Required Determinations

I. Background

IHS is an agency of HHS whose principal mission is to provide health care to American Indians and Alaska Natives, 25 U.S.C. 1661. IHS' authority to provide health care services to the American Indian and Alaska Native people derives from the Snyder Act of 1921, 25 U.S.C. 13, a broad, general authority to ''expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians,'' for, among other things, the ''relief of distress and conservation of health'', 25 U.S.C. 13. In 1954, Congress transferred this responsibility and other health care ''functions, responsibilities, authorities, and duties of the Department of the Interior'' (including the Snyder Act) to the Department of Health, Education, and Welfare, the predecessor of HHS. See Public Law 83–568, 68 Stat. 674 (1954) (codified at 42 U.S.C. 2001 *et seq.*). The Transfer Act authorizes IHS to use the Buy Indian Act (25 U.S.C. 47) to carry out its health care responsibilities. IHS authority to use the Buy Indian Act is further governed by 25 U.S.C. 1633. This rule describes uniform administration procedures that the IHS will use in all of its locations to encourage procurement relationships with Indian labor and industry in the execution of the Buy Indian Act. IHS's current rules are codified at HHSAR, 48 CFR part 326, subpart 326.6.

II. Statutory Authority

The Transfer Act authorizes the Secretary of HHS to ''make such other regulations as he deems desirable to carry out the provisions of the [Transfer Act]'', 42 U.S.C. 2003. The Secretary's authority to carry out functions under the Transfer Act has been vested in the Director of the IHS under 25 U.S.C. 1661. Because of these authorities, use of the Buy Indian Act is reserved to IHS and is not available for use by any other HHS component. IHS authority to use the Buy Indian Act is further governed by 25 U.S.C. 1633, which directs the Secretary to issue regulations governing the application of the Buy Indian Act to construction activities.

III. Overview of Final Rule

This rule supplements the FAR and the HHSAR. This rule formalizes an administrative procedure for all IHS acquisition activities and locations to ensure uniformity for offers submitted by Indian labor and industry under solicitations set-aside under the Buy Indian Act and this part.

A. Numbering System

This rule replaces the HHSAR, Subpart 326.6—Acquisitions Under the Buy Indian Act.

B. How This Rule Fits With the Indian Health Service and Department Acquisition Regulations

This rule amends the HHSAR, which is maintained by the Assistant Secretary for Financial Resources (ASFR) pursuant to 48 CFR 301.103. ASFR is responsible for developing and preparing for issuance all acquisition regulatory material to be included in the HHSAR. Accordingly, the rule is being issued through coordination between IHS and ASFR. The rule is intended to establish Buy Indian Act acquisition policies and procedures for IHS that are consistent with rules proposed and/or adopted by the Department of the Interior (DOI).

IV. Tribal Consultation

In accordance with 25 U.S.C. 1672 and Executive Order 13175, IHS held consultation sessions with the Tribes on the proposed version of this rule. The rule will more directly affect Indian economic enterprises and any contractors who use the Buy Indian Act for subcontracting.

V. Development of Rule

A. Publication and Comment Solicitation

This rule has been in development at IHS since 2016, in collaboration with HHS/ASFR. Public comments received by IHS were reviewed, addressed, and incorporated in this final rule. Notification regarding a series of four public consultation sessions was published in the **Federal Register** on November 10, 2020 (85 FR 71596). The consultation sessions were conducted virtually on November 9, 2020; November 16, 2020; January 6, 2021; and June 9, 2021. IHS also published a proposed rule on November 10, 2020 (85 FR 71596). A summary of the comments received during these consultations and throughout the public comment period is provided below.

B. Summary of Comments

Indian Economic Enterprise (IEE) and Indian Small Business Economic Enterprise (ISBEE) Preference

Comment: A Tribal organization supported allowing the Contracting Officer (CO) to engage in direct negotiations when only one offer is received. The commenter stated this is a welcome improvement that will minimize the CO's obligation to go through the deviation process and will likely increase the amount of contract awards to ISBEE/IEEs.

Response: The CO may negotiate with the IEE if otherwise permitted under the applicable procurement strategy.

Comment: A Tribal organization suggested eliminating GSA from the IHS required sources due to the awards to off-reservation entities. The Tribal organization recommended that offers from on-reservation entities have preference to those off-reservation.

Response: IHS will prioritize Buy Indian set-asides ahead of small businesses that are not ISBEEs/IEEs and satisfy acquisitions priorities for the use of mandatory government sources, as required under FAR Part 8.002.

Comment: A Tribal organization supported the inclusion of priority use of the Buy Indian Act, as proposed, to ISBEEs and then to IEEs. The commenter felt it will be critical for the IHS CO to have the necessary time and resources to formulate a ''reasonable expectation'' that no competitive ISBEE offers will be received. The commenter also asked what identified benchmarks and/or types of engagement with Tribes and Tribal economic organizations, if any, will be deployed to inform this expectation.

Response: IHS agrees with the comment and confirms that if the CO determines after market research that there is no reasonable expectation of obtaining offers from two or more ISBEEs, the CO may consider a set-aside for IEEs. To maintain consistency and fairness to all ISBEEs and IEEs, the CO will post all Buy Indian Act set-asides to the government point of entry, *beta.sam.gov* (formerly Federal Business Opportunities), unless other government advertising requirements apply.

Comment: A Tribal organization commented that documenting the reasons why an ISBEE/IEE was chosen for a contract award is just as important as documenting why an ISBEE/IEE was not chosen. The commenter supported the language in Section 326.603–1(g) that requires a CO to document the reasons for an approved deviation determination when IEE offeror(s) were not reasonable or otherwise

unacceptable. The commenter also suggested that the CO's documentation include, at a minimum, an accurate list of all IEE offeror(s), a description of the communications issued during the solicitation process and a detailed explanation why each IEE offeror was not selected. The commenter felt such records are key to transparency and accountability in the implementation of the Buy Indian Act.

Response: When awarding Buy Indian contracts, the CO will fulfill their usual responsibilities under the FAR. IHS will ensure strict guidelines COs will follow, to include sufficient documentation, when preparing the Buy Indian Act Deviation determination. Deviation approval thresholds are in place to ensure appropriate oversight review is conducted to support determinations. IHS will also require all approved deviations be reported and provided to IHS Headquarters to be posted for public access. IHS understands it is important for Indian Country and the public to have transparency on the categories in which deviations have been issued. This will assist ISBEEs and IEEs to categorically focus on these specific IHS procurement opportunities.

Comment: Two Tribal organizations requested an explanation why preference would not be given under the Buy Indian Act to an IEE when an interested IEE is identified after a non-restricted solicitation has been issued. The commenters were concerned that non-restricted solicitations may be issued where use of an IEE restricted solicitation would have been appropriate and would have likely identified one or more qualified Indian-owned offerors. The commenters recommended requiring the IHS Head of Contracting Activity and the CO to prioritize IEE preference in accordance with the Buy Indian Act to the greatest extent possible. However, the commenters noted that there are certain circumstances where set-asides under the Buy Indian Act are infeasible. Where it is feasible, the commenters requested that IHS ensure, to the best of its ability, that appropriate solicitations are issued and market research conducted. The commenters suggested an express regulatory requirement that Buy Indian Act contracts be prioritized in the IHS procurement process, making the Buy Indian Act the starting point in all procurements.

Response: When awarding Buy Indian contracts, the CO will fulfill their usual responsibilities under the FAR. Subpart 326.603 maintains that IHS give preference to IEEs through set-asides when acquiring supplies, general services, Architect-Engineer (A&E) services or construction. Additionally, Subpart 326.604 maintains that acquisitions of supplies, services and construction subject to commercial items or simplified acquisitions procedures, in accordance with FAR Part 12 and 13 be set-aside exclusively for ISBEEs. Subpart 326.604 also maintains procedures the CO will follow if an IEE identifies interest to a solicitation that has not been set-aside under the Buy Indian Act. The COs are responsible for conducting sufficient market research and obtaining approval to deviate from the Buy Indian Act prior to issuing a solicitation not set-aside under the Buy Indian Act.

IEE and ISBEE Definition and Clarification

Comment: A Tribal organization recommended that the definition of Indian Economic Enterprise (IEE) in the proposed new regulations at 48 CFR 326.601 acknowledge the requirements of 43 U.S.C. 1626(e)(1) and (e)(2). The commenter recommended adding language to the definition of IEE to specify the inclusion of Alaska Native Corporations that meet the requirements of 43 U.S.C. 1626(e)(1) or (e)(2).

Response: Following publication of the proposed rule, Congress amended the Buy Indian Act through Public Law 116–261 (December 30, 2020) to incorporate the definition of ''Indian economic enterprise'' (IEE) set forth in 48 CFR 1480.201 (or successor regulations). To maintain consistency with the statute, IHS is utilizing the definition of an Indian economic enterprise in 48 CFR 1480.201. IHS will also utilize the definitions of ''Indian'' and ''Indian Tribe'' from 48 CFR 1480.201 in the final rule, since these terms are included in the definition of IEE. As defined in 48 CFR 1480.201, the term ''Indian Tribe'' encompasses a Tribe, band, nation or other recognized group or community that is recognized as eligible for the special programs and services by the United States to Indians because of their status as Indians. This definition also includes Alaska Native village or regional or village corporation under the Alaska Native Claims Settlement Act (ANCSA).

Comment: A Tribe commented in support of the proposed definition of an Indian Economic Enterprise. The commenter felt that the minimum threshold of at least 51 percent combined Native ownership and management control by at least one or more qualified individual AI/ANs both aligns with the Act and is appropriately tailored to ensure that it benefits only majority Indian-owned businesses. Further, the commenter supported the separate definition of federally recognized Tribe and Alaska Native Corporation.

Response: As noted in response to the comment above, Congress amended the Buy Indian Act following publication of the proposed rule and incorporated the definition of ''Indian Economic Enterprise'' set forth in 48 CFR 1480.201 (or successor regulations). To maintain consistency with the statute, IHS is utilizing the definition of ''Indian Economic Enterprise'' (IEE) set forth in 48 CFR 1480.201. IHS is also utilizing the definitions of other terms in 48 CFR 1480.201, such as ''Indian Tribe,'' since they are included in the IEE definition.

Comment: A Tribe commented in support of the multiple pathways for responding to a change in a contractor's ownership status during the term of a contract award. The commenter felt that changes in ownership status may be caused by a variety of factors and allowing more than one response mechanism recognizes that. The commenter recommended the inclusion of a new subsection clarifying the process when a contractor is sanctioned under Section 326.606–1. If a contract were to be terminated for default before an initiated construction is completed, the commenter suggested that the CO consult the solicitation records and offer the second choice ISBEE/IEE offerors. The commenter also recommended allowing the existing contractor facing termination to continue work on the project until a new rapid solicitation process can be completed. The commenter felt that project completion is important and should be facilitated in the new regulations by minimizing the potential for disruption of the underlying contract.

Response: When awarding Buy Indian contracts, the contracting officer will fulfill their usual responsibilities under the FAR and adhere to those processes as outlined in FAR Part 49.

Comment: A Tribal organization commented it was pleased to see the ISBEE/IEE verification process, which instructs the CO to make every effort to allow an offeror to correct the information submitted to verify its status as an eligible ISBEE or IEE. The commenter felt this language aligns with the spirit of the Buy Indian Act and will enable the IHS to avoid unnecessarily disqualifying an offeror in situations where a supplemental response would address an issue.

Response: These provisions are included in the final regulation. The CO will maintain fairness in all acquisitions and fulfill their usual responsibilities under the FAR.

Comment: A Tribe recommended identifying the specific timeframes, types of outreach and follow-up actions that would qualify an offeror as ''not responsive'' for the purposes of verifying submitted information and IEE representation status. As written, the commenter thought the determination would be in the CO's discretion. For consistent application and expectations, the commenter strongly recommended that a uniform standard be stated.

Response: The CO will maintain fairness in all acquisitions and fulfill their usual responsibilities under the FAR. The cognizant CO will determine a reasonable response time for the purposes of verifying IEE representation. As such, specified timeframes are identified in Subpart 326.607, Challenges to Representation, where a CO may question the representation of an IEE at any time.

Comment: A Tribe felt that it is important to highlight the need for support of investment in ISBEE and IEE development, beyond the scope of the proposed rule. The commenter noted that implementation of the Buy Indian Act depends on the availability of qualified IEEs. The commenter also noted that Tribes and individual American Indians and Alaska Natives face substantial barriers in developing the capital, personnel, infrastructure, business networks, supply chains, etc. to compete for federal contracts. The commenter pointed to the Government Accountability Office's July 2015 report (Buy Indian Act: Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices, GAO–15–588) and the data in Figure 4, regarding IHS total contract obligations and Indian-owned obligations. The commenter felt that meaningful federal commitment is needed to improve the Buy Indian Act and take into consideration how it can better develop qualified ISBEEs and IEEs in Indian Country. The commenter thought this would likely require interagency coordination and leveraging of available resources, as well as outreach in Indian Country to educate Indian-owned business on contracting opportunities. The commenter recommended that the issue be taken to the respective Tribal advisory committees of agencies such as HHS, Department of the Treasury, and Department of Labor for the deliberation of Tribal leaders.

Response: IHS is interested in collaborating with Tribes and other Federal agencies to provide more data and insight on how IHS is meeting the requirements of the Buy Indian Act. IHS, in collaboration with DOI BIA, is actively exploring how to publicly share information related to Buy Indian Act performance to provide visibility to Tribes. Additionally, once the HHSAR Buy Indian Act rule is finalized, IHS will coordinate, plan and conduct training, and disseminate other helpful information routinely to internal and external stakeholders and all IHS acquisition workforce.

Covered Construction

Comment: A Tribal organization commented that it welcomes the proposed elimination of ''covered'' construction contracts. It expressed discontent with the decision in *Andrus* v. *Glover Construction Co.* and noted the ability to utilize the Buy Indian Act will be a great benefit to ISBEEs/IEEs.

Response: The decision in *Andrus* v. *Glover Construction Co.* did not directly impact IHS. However, to avoid any potential confusion, we are eliminating the word ''covered'' in reference to construction contracts.

Buy Indian Deviation/Challenges

Comment: A Tribal organization suggested that the proposed deviation thresholds be revised to reflect the business acumen of the warranted CO, noting that $250,000 is the Simplified Acquisition Threshold (SAT) and suggesting that warranted COs should have the authority to approve a Buy Indian Act deviation up to the SAT. The commenter also suggested specifying the Chief Contracting Officer (CCO) (or IHS DAP Director, absent a CCO) for deviations exceeding $250,000 but not exceeding $700,000.

Response: To maintain required oversight of all deviation determinations, IHS will ensure specific authorized approvals for larger dollar proposed contract actions. To ensure compliance and consistency, IHS will require all approved deviations be reported to IHS Headquarters on a quarterly basis.

Comment: Two Tribal organizations expressed concern with how IHS will determine fair market price and reasonableness. The commenters recommended a sliding scale be utilized to determine fair and reasonable pricing based on the government estimate of each procurement action. The commenters were concerned about potential protests on the basis of fair and reasonable pricing. The commenters also recommended a tiered approach in determining the competitive range, such as allowing the IEE to propose a new scope and fee when they are within 10 percent of the winning proposal/bid.

Response: When awarding Buy Indian contracts, the contracting officer will fulfill their usual responsibilities under the FAR. IHS' ability to allow for an IEE to propose a new scope and fee would not be allowable unless such discussions are made with and available to all offerors.

Comment: A Tribal organization requests clarification in the final rule of applicable procedures when a deviation determination is disapproved. The commenter felt this situation was not addressed in the draft regulations. The commenter recommended that the CO first be required to reassess the viability of the ISBEE/IEE offers received and make a selection from the existing solicitation pool, but if no such offers were acceptable, the CO could cancel the solicitation and issue a new IEE set-aside. The commenter felt this would be an efficient approach that would avoid the imposition of duplicative administrative burdens on both offerors and the federal government.

Response: The CO will fulfill their usual responsibilities under the FAR. IHS believes the current language and additional process details set forth in the final rule are sufficient and address this concern.

Buy Indian Act Compliance

Comment: A Tribe and Tribal organization recommended that IHS include a new section on internal accountability and communications. The commenters felt that establishing efficient monitoring and compliance protocols, as well as communications standards, would enhance the success of the Buy Indian Act in promoting economic growth for Tribal Nations. The commenters recommend requiring COs at each IHS Area Office to collect, aggregate, and maintain accurate data to measure progress in the implementation of the Buy Indian Act. The commenters suggested that the data collected should reflect outreach and coordination efforts with Tribal Nations, and status reports on anticipated, pending, and completed ISBEE and IEE solicitations. The commenters noted that this should not include any additional data collection or reporting requirements for Tribal Nations. The commenters suggested requiring COs at each IHS Area Office to submit quarterly and annual reports to IHS Headquarters on the status of completed solicitations, any deviation determinations, updates on current Buy Indian Act contracts, and information on any pending or planned solicitations. The commenters felt that the systematic monitoring, compliance protocols and communications standards are critically needed to make meaningful, sustainable gains in the long-term success of the Buy Indian Act and its underlying

policy of advancing economic self-sufficiency and growth in Indian Country. The commenters further suggested that the HHS include review of Buy Indian Act contracts as part of its regular procurement review process and provide an annual report to Congress on compliance with Buy Indian Act requirements, aggregate data on ISBEE and IEE contracts, developments, and ongoing challenges in implementation.

Response: When the HHS Buy Indian Act rule is finalized, IHS plans to update its internal Indian Health Manual (IHM) in support of the Buy Indian Act to provide for specific processes and details on training, reporting and compliance. Each IHS Area Office will be required to report quarterly on all Deviations and Challenges. IHS, Tribes and the public can access public data in *beta.sam.gov* to generate reporting of all IHS obligations set-aside under the Buy Indian Act.

Comment: Two Tribal organizations commented that, in order to ensure and improve the success of the Buy Indian Act, IHS needed to develop ongoing evaluation mechanisms in policies and procedures to gather input from Tribal Nations on barriers to the Act's implementation. The commenters felt that one such barrier would be the ''rule of two'' in procurement decisions. The commenters noted that this has been a barrier to the Buy Indian Act program and the commenters felt it could be resolved if IHS and other federal agencies considered the input of Tribal Nation businesses. The commenters recommended that IHS hold annual Tribal Listening Sessions with each IHS Area to receive input on successes and challenges to the Buy Indian Act implementation, which could inform IHS of the need to update policies/procedures/guidance and the need for Tribal consultation on the development of further updates to its Buy Indian Act regulations. The commenters recommended the development of a mechanism to evaluate the Buy Indian Act implementation process, to make the best use of the Buy Indian Act in serving Indian Country and filling covered procurement contracts.

Response: COs are required by Subpart 326.603–1(e) and (f) to perform market research. COs may seek a deviation from the requirement to set-aside for ISBEEs or IEEs only if there is no reasonable expectation of obtaining offers that will be competitive. When a deviation is determined to be necessary, COs are required to document and defend the rationale. If a CO must deviate from the Buy Indian Act preferences they must use the procedures of Subpart 326.603–3. Additionally, IHS is interested in collaborating with Tribes to provide more data and insight on how IHS is meeting the requirements of the Buy Indian Act and plans to collaborate with BIA on how to publicly share information related to Buy Indian Act performance to provide visibility to Tribes.

Comment: A Tribe commented that DOI recently held Tribal consultations on the proposed updates to its Buy Indian Act regulations, which are intended to eliminate barriers to IEEs from competing on certain construction contracts; expand the ability for IEEs to subcontract work; clarify preferences for IEEs; and ensure greater preference to IEEs when a deviation from the Buy Indian Act is necessary. The commenter recommended that IHS issue an update to its NPRM to reflect DOI's current draft, which DOI shared with IHS. Although DOI is still considering its proposed changes, the commenter felt that IHS has the opportunity to ensure consistency with implementing the Buy Indian Act regulations. Furthermore, the commenter recommended that IHS and DOI work collaboratively to update the Buy Indian Act regulations to ensure that there is no further confusion regarding participation in the program.

Response: IHS is committed to implementing the Indian Community Economic Enhancement Act requirement to harmonize the regulations implementing the Buy Indian Act and will continue to coordinate and collaborate with DOI/BIA.

Comment: A Tribal organization recommended language requiring the COs to insert the clause at HHSAR 352.226–2, Indian Preference Program, and the clause at HHSAR 326.504, Tribal Preference Requirements, in all solicitations and contracts when the contract award is to be made under the authority of the Buy Indian Act. The commenter felt that the inclusion of this requirement would bring the proposed HHSAR Section 326.6 into greater alignment with the DOI's regulations and reaffirm the preference to Indians in employment, training, and subcontracting.

Response: Pursuant to HHSAR Subpart 326.5, Indian Preference in Employment, Training and Subcontracting Opportunities, IHS already includes clauses 352.226–1, Indian Preference and 352.226–2, Indian Preference Program in all service, A&E and constructions contracts. HHSAR Subpart 326.5 is not part of the rule to update Subpart 326.6, Acquisitions Under the Buy Indian Act.

General Comments

Comment: A Tribal organization recommended that the HHSAR regulations parallel the DOI's rules that extend the Buy Indian Act's procurement authority more broadly than the purview of the Assistant Secretary of Indian Affairs (ASIA). The commenter noted that the DOI regulations permit the Secretary to delegate authority under the Buy Indian Act to a bureau or office within the Department other than BIA, 48 CFR 1480.402(b). The commenter felt that the current draft amendments to the HHSAR should be revised to allow use of the Buy Indian Act authority by other parts of HHS, in addition to the IHS, in order to be parallel.

Response: As further explained under the ''Statutory Authority'' section of this notice, use of the Buy Indian Act is not available to any HHS component other than IHS.

Comment: A Tribal organization commented that all current procurement officers need to receive training on the Buy Indian Act and its importance from the Native American/Tribe's perspective. The commenter also recommended that all new procurement officers spend at least a day learning the history of Native Americans, the more recent acts of Congress, and the information needed to perform due diligence or sources sought under the Buy Indian Act.

Response: Once the HHS Buy Indian Act rule is updated and finalized, IHS will begin the process of updating its IHM, Chapter 5, Section 6, Buy Indian Policy, to define and implement training, compliance and reporting measures to be taken to ensure the agency fully adheres to the Buy Indian Act. The estimated costs to IHS in conducting these actions and measures in-house will be very minimal.

Other Comments

Comment: A commenter recommended including a few items not directly related to the HHS Buy Indian Act proposed rule. These items include cross agency coordination on law enforcement acquisitions and through a consolidated database system. The commenter also suggested auditing and addressing the new organizational structures for completeness, and modernization to a coordinated system that manages and tracks procurements.

Response: While these comments are beyond the scope of this regulation, because this regulation addresses only HHS's implementation of the Buy Indian Act, HHS/IHS appreciates this input.

VI. Required Determinations

1. *Regulatory Planning and Review (Executive Orders 12866 and 13563).* Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. IHS has developed this rule in a manner consistent with these requirements.

2. *Regulatory Flexibility Act.* HHS certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

3. *Small Business Regulatory Enforcement Fairness Act.* This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule does not have an annual effect on the economy of $100 million or more nor does it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This final rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. *Unfunded Mandates Reform Act.* This final rule does not impose an unfunded mandate on State, Local, or Tribal Governments (SLTG) or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on SLTGs, or the private sector nor does the rule impose requirements on SLTGs. This final rule does not result in the expenditures of funds by SLTGs, in aggregate, or by the private sector of $100 million or more in any one year. As such, a prepared written statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. *Takings (Executive Order 12630).* This final rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

6. *Federalism (Executive Order 13132).* Under the criteria in section 1 of Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule would not substantially and directly affect the relationship between the Federal and State Governments. A Federalism summary impact statement is not required.

7. *Civil Justice Reform (Executive Order 12988).* This final rule complies with the requirements of Executive Order 12988. Specifically, this rule (1) meets the criteria of section 3(a) of this requiring Executive Order that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (2) meets the criteria of section 3(b)(2) of this Executive Order requiring that all regulations be written in clear language and contain clear legal standards.

8. *Consultation with Indian Tribes (Executive Order 13175).* IHS strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department and Agency consultation policies and under the criteria in Executive Order 13175 and have determined there may be substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking. In addition, we note that 25 U.S.C. 1672 expressly directs consultation prior to amendment of the rule. The IHS held consultation sessions with the Tribes as stated in the Background section of this preamble.

9. *Paperwork Reduction Act, 44 U.S.C. 3501, et seq.* This final rule requires offerors to certify whether they met the definition of an ''Indian Economic Enterprise'' and to provide the name of the federally recognized Indian Tribe or Alaska Native Corporation with which they are affiliated. These statements are considered simple representations that an offeror submitted to support its claim for eligibility to participate in contract awards under the authority of the Buy Indian Act (25 U.S.C. 47, as amended). Because these statements are a simple certification or acknowledgment related to a transaction, they do not qualify as a collection of information under the Paperwork Reduction Act. See 5 CFR 1320.3(h).

10. *National Environmental Policy Act.* This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by the categorical exclusion listed in 43 CFR 46.210(c). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. *Clarity of this Regulation.* We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must (1) be logically organized; (2) use the active voice to address readers directly; (3) use common, everyday words and clear language rather than jargon; (4) be divided into short sections and sentences; and (5) use lists and tables wherever possible.

List of Subjects

48 CFR Part 326

Government procurement, Indians, Indians—business and finance, Reporting and recordkeeping requirements.

48 CFR Part 352

Government procurement.

For the reasons set out in the preamble, HHS amend parts 326 and 352 as follows:

CHAPTER 3—HEALTH AND HUMAN SERVICES

Subchapter D—Socioeconomic Programs

PART 326—OTHER SOCIOECONOMIC PROGRAMS

■ 1. The authority citation for part 326 is revised to read as follows:

Authority: 5 U.S.C. 301, 25 U.S.C. 47, 25 U.S.C. 1633, 41 U.S.C. 253(c)(5), and 42 U.S.C. 2003.

■ 2. Revise subpart 326.6 to read as follows:

Subpart 326.6—Acquisitions Under the Buy Indian Act

326.600—General
326.600–1 Scope of part.
326.600–2 Buy Indian Act acquisition regulations.
326.601—Definitions
326.601 Definitions.
326.602—Applicability
326.602–1 Scope of part.
326.602–2 Restrictions on the use of the Buy Indian Act.
326.603—Policy
326–603–1 Requirement to give preference to Indian Economic Enterprises.
326–603–2 Delegations and responsibility.
326–603–3 Deviations.
326.604—Procedures
326.604–1 General.
326.604–2 Procedures for Acquisitions under the Buy Indian Act.
326.604–3 Debarment and suspension.
326.605—Contract Requirements
326.605–1 Subcontracting limitations.
326.605–2 Performance and payment bonds.
326.606—Representation by an Indian Economic Enterprise Offeror
326.606–1 General.
326.606–2 Representation provision.
326.606–3 Representation process.
326.607—Challenges to Representation
326.607–1 Procedure.
326.607–2 Receipt of Challenge.
326.607–3 Award in the face of Challenge.
326.607–4 Challenge not timely.

Subpart 326.6—Acquisitions Under the Buy Indian Act

326.600 General.

326.600–1 Scope of part.

This subpart implements policies and procedures for the procurement of supplies, general services, architect and engineer (A&E) services, or construction while giving preference to Indian Economic Enterprises under authority of the Buy Indian Act (25 U.S.C. 47).

326.600–2 Buy Indian Act acquisition regulations.

(a) This subpart supplements Federal Acquisition Regulation (FAR) and Health and Human Services Acquisition Regulation (HHSAR) requirements to meet the needs of the Department of Health and Human Services (HHS), Indian Health Service (IHS) in implementing the Buy Indian Act.

(b) This subpart is under the direct oversight and control of the Head of Contracting Activity (HCA), within the Office of Management Services (OMS)—IHS, HHS. The HCA, in consultation with the Assistant Secretary for Financial Resources (ASFR) and the Senior Procurement Executive (SPE), is responsible for promulgating this subpart, and following its enactment, will be primarily responsible for implementing its terms.

(c) Acquisitions conducted under this subpart are subject to all applicable requirements of the FAR and HHSAR, as well as internal policies, procedures, or instructions issued by IHS. After the FAR, this HHSAR subpart would take precedence over any inconsistent IHS policies, procedures, or instructions.

326.601 Definitions.

Alaska Native Claims Settlement Act (ANCSA) means Public Law 92–203 (December 18, 1971), 85 Stat. 688, codified at 43 U.S.C. 1601–1629h.

Alaska Native Corporation means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Group Corporation as those terms are defined by ANCSA.

Buy Indian Act means section 23 of the Act of June 25, 1910, codified at 25 U.S.C. 47.

Chief Contracting Officer (CCO) means a person with authority to enter into, administer, or terminate contracts and make related determinations and findings on behalf of the U.S. Government for the respective IHS Areas.

Contracting Officer (CO) means a person with the authority to enter into, administer, or terminate contracts and make related determinations and findings on behalf of the U.S. Government.

Construction means the planning, design, construction and renovation, including associated architecture and engineering services, of IHS facilities pursuant to 25 U.S.C. 1631 and in the construction of safe water and sanitary waste disposal facilities pursuant to 25 U.S.C. 1632.

Deviation means an exception to the requirement to use the Buy Indian Act in fulfilling an acquisition requirement subject to the Buy Indian Act.

Fair market price means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost, as determined in accordance with FAR 19.202–6(a).

Indian means a person who is an enrolled member of an Indian Tribe or ''Native'' as defined in the Alaska Native Claims Settlement Act.

Indian Health Service (IHS) means operations at all administrative levels of IHS, including Headquarters, Area Offices, and Service Units (inclusive of clinics).

Indian Economic Enterprise (IEE) means any business activity owned by one or more Indians or Indian Tribes that is established for the purpose of profit provided that: The combined Indian or Indian Tribe ownership must constitute not less than 51 percent of the enterprise; the Indians or Indian Tribes must, together, receive at least a majority of the earnings from the contract; and the management and daily business operations of an enterprise must be controlled by one or more individuals who are Indians. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. The enterprise must meet these requirements throughout the following time periods:

(1) At the time an offer is made in response to a written solicitation;

(2) At the time of the contract award; and

(3) During the full term of the contract.

Indian Tribe means an Indian Tribe, band, nation, or other recognized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including any Alaska Native village or regional or village corporation under the Alaska Native Claims Settlement Act (Pub. L. 92–203, 85 Stat. 688; 43 U.S.C. 1601).

Indian Small Business Economic Enterprise (ISBEE) means an IEE that is also a small business concern established in accordance with the criteria and size standards of 13 CFR part 121.

Interested Party means an IEE that is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual award of a particular contract set-aside pursuant the Buy Indian Act.

List of Federally Recognized Tribes means the list published annually in the **Federal Register** identifying Indian entities that are recognized by and eligible to receive services from the United States Department of the Interior (DOI), Bureau of Indian Affairs (BIA).

Transfer Act of 1954 means the authority of transferred responsibility and other health care ''functions, responsibilities, authorities and duties of the Department of the Interior'' (including the Snyder Act) to Health, Education and Welfare, the predecessor of the HHS. Public Law 83–568, 68 Stat. 674 (1954) (codified at 42 U.S.C. 2001 *et seq.*). The Transfer Act authorizes IHS to use the Buy Indian Act (25 U.S.C. 47) to carry out its health care responsibilities.

326.602 Applicability.

326.602–1 Scope of part.

Except as provided in HHSAR 326.602–2, this subpart applies to all

acquisitions above the micro-purchase threshold, including simplified acquisitions, made by IHS, and any HHS operating divisions or agency outside of IHS conducting acquisitions on behalf of IHS.

326.602–2 Restrictions on the use of the Buy Indian Act.

(a) IHS may not use the authority of the Buy Indian Act and the procedures contained in this subpart to award intergovernmental contracts to Tribal organizations to plan, operate, or administer authorized IHS programs (or parts thereof) that are within the scope and intent of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93–638). IHS must use the Buy Indian Act solely to award procurement contracts to IEEs. Contracts subject to ISDEAA are not covered under the FAR and are codified separately under 25 CFR part 900 and 42 CFR part 137.

(b) Contract health services (referred to administratively as Purchased/Referred Care services) are defined at 25 U.S.C. 1603 as excluding services provided by Buy Indian Act contractors. Accordingly, the Buy Indian Act may not be used to obtain services through the Purchased/Referred Care program (previously Contract Health Services). Purchase orders for care authorized pursuant to 42 CFR part 136 subpart C may be issued without regard to the provisions of this Part.

326.603 Policy.

326.603–1 Requirement to give preference to Indian Economic Enterprises.

(a) Except as provided by 25 U.S.C. 1633, IHS must use the negotiation authority of the Buy Indian Act to give preference to IEEs whenever the use of that authority is practicable. Thus, IHS may use the Buy Indian Act to give preference to IEEs through set-asides when acquiring supplies, general services, A&E services, or construction to meet IHS needs and requirements. The Buy Indian Act does not apply when mandatory government sources are available, as required by FAR Part 8.002.

(b) Contract awards under the authority of the Buy Indian Act can be pursued via the acquisition procedures prescribed in this HHSAR subpart in conjunction with the procedures from FAR part 12, 13, 14, 15 and/or 16.

(c) The CO will give priority to ISBEEs for all purchases, regardless of dollar value, by utilizing ISBEE set-aside to the maximum extent possible. COs when prioritizing ISBEEs may consider either:

(1) A set-aside for ISBEEs; or

(2) A sole source award to an ISBEE, as authorized under the FAR.

(d) If the CO determines after market research that there is no reasonable expectation of obtaining offers from two or more ISBEEs that will be competitive in terms of market price, product quality, and delivery capability, the CO may consider either:

(1) A set-aside for IEEs; or

(2) A sole source award to an IEE, as authorized under the FAR.

(e) If the CO determines after market research that there is no reasonable expectation of obtaining two or more offers that will be competitive in terms of market price, product quality, and delivery capability, from ISBEEs and/or IEEs, then the CO shall follow the Deviation process under HHSAR 326.603–3.

(f) Price analysis technique(s) provided in FAR 15.404–1(b) shall be used in determination of price fair and reasonableness when only one offer is received from a responsible ISBEE or IEE in response to an acquisition set-aside under paragraph (d)(1) or (e)(1) of this section:

(1) If the offer meets the technical capability requirements and is not at a reasonable and fair market price, then the CO may negotiate with that enterprise for a reasonable and fair market price, as authorized under the FAR.

(2) If the offer meets the technical capability requirements and is at a reasonable and fair market price, then the CO must:

(i) Make an award to that enterprise;

(ii) Document the reason only one offer was considered; and

(iii) Initiate action to increase competition in future solicitations.

(g) If the offers received in response to an acquisition set-aside under paragraph (c) or (d) of this section are determined to be unreasonable or otherwise unacceptable upon price and/or technical evaluations, then the CO must follow the Deviation process under HHSAR 326.603–3. The CO must document in the deviation determination the reasons why the IEE offeror(s) were not reasonable or otherwise unacceptable.

(1) If a deviation determination is approved, the CO must cancel the current ISBEE or IEE set-aside solicitation and inform all offerors in writing.

(2) If a deviation determination is approved, the CO must identify, based on current available market research, an alternate set-aside or procurement method.

(3) When the solicitation of the same requirement is posted, the CO must inform all previous offerors in writing of the solicitation number.

(h) With respect to construction, the provisions of 25 U.S.C. 1633 shall apply. Under 25 U.S.C. 1633, IHS may give a preference to an IEE unless the agency finds, after considering the evaluation criteria listed in 25 U.S.C. 1633, that the project to be contracted for will not be satisfactory or cannot be properly completed or maintained under the proposed contract.

326.603–2 Delegations and responsibility.

(a) The Director, IHS—exercises the authority of the Buy Indian Act pursuant to the Transfer Act of 1954, as delegated pursuant to 25 U.S.C. 1661. Under 25 U.S.C. 1661, the Director is authorized ''to enter into contracts for the procurement of goods and services to carry out the functions of the IHS.'' IHS exercises this authority in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(b) The IHS HCA is responsible for ensuring that all IHS acquisitions under the Buy Indian Act comply with the requirements of this part.

326.603–3 Deviations.

(a) There are certain instances where the application of the Buy Indian Act to an acquisition may not be appropriate. In these instances, the CO must detail the reasons in writing or via email and make a deviation determination.

(b) Some acquisitions by their very nature would make such a written determination unnecessary. For example, any order or call placed against an indefinite delivery vehicle that already has an approved deviation from the requirements of the Buy Indian Act.

(c) Deviation determinations shall be required for all other acquisitions where the Buy Indian Act is applicable and must be approved as follows:

TABLE 1 TO PARAGRAPH (c)

For a proposed contract action	The following official may authorize a deviation
Exceeding the micro-purchase threshold and up to $25,000	Contracting Officer.
Exceeding $25,000 but not exceeding $700,000	Chief Contracting Officer (CCO) (or the IHS Division of Acquisition Policy (DAP) Director, absent a CCO).
Exceeding $700,000 but not exceeding $13.5 million	IHS Competition Advocate.
Exceeding $13.5 million but not exceeding $68 million	Head of Contracting Activity.
Exceeding $68 million	HHS Office of Small & Disadvantaged Business Utilization (OSDBU), Office of the General Counsel (OGC), HHS Department Competition Advocate and the HHS Senior Procurement Executive.

(d) Deviations may be authorized prior to issuing the solicitation when the CO makes the following determinations and takes the following actions:

(1) The CO determines after market research that there is no reasonable expectation of obtaining offers that will be competitive in terms of market price, quality and delivery from two or more responsible ISBEEs or IEEs.

(2) The deviation determination is authorized by the official listed at HHSAR 326.603–3(c) for the applicable contract action.

(e) If a deviation determination has been approved, the CO must follow the FAR and HHSAR unless specified otherwise.

(f) Acquisitions made under an authorized deviation from the requirements of the Buy Indian Act must be made in conformance with the order of precedence required by FAR Part 8.002.

326.604 Procedures.

326.604–1 General.

All acquisitions under the authority of the Buy Indian Act, must conform to all applicable requirements of the FAR and HHSAR.

326.604–2 Procedures for Acquisitions under the Buy Indian Act.

(a) Each acquisition of supplies, services and construction that is subject to commercial items or simplified acquisition procedures in accordance with FAR Parts 12 or 13 must be set-aside exclusively for ISBEEs, except as otherwise set forth in this Part. IHS will use ISBEE commercial item(s) or simplified acquisition set-asides to accomplish this preference action.

(b) Commercial items or simplified acquisitions under this section must conform to the competition and price reasonableness documentation requirements of FAR 12.209 for commercial item acquisitions and FAR 13.106 for simplified acquisitions.

(c) When acquiring construction and A&E services, solicit proposals and evaluate potential contractors in accordance with FAR Part 36.

(d) This paragraph applies to solicitations that are not restricted to participation of IEEs.

(1) If an interested IEE is identified after a solicitation has been issued, but before the date established for receipt of offers, the contracting office must provide a copy of the solicitation to this enterprise. In this case, the CO:

(i) Will not give preference under the Buy Indian Act to the IEE; and

(ii) May extend the date for receipt of offers when practical.

(2) If more than one IEE is identified after issuing a solicitation, but prior to the date established for receipt of offers, the CO may cancel the solicitation and re-compete it as an IEE set-aside.

(e) The contracting officer shall insert the provision at HHSAR 352.226–4, NOTICE OF INDIAN SMALL BUSINESS ECONOMIC ENTERPRISE SET–ASIDE, in solicitations for acquisitions that are set-aside to ISBEE concerns under HHSAR 326.603–1(c).

(1) The contracting officer shall insert the provision at HHSAR 352.226–5, NOTICE OF INDIAN ECONOMIC ENTERPRISE SET–ASIDE, in solicitations for acquisitions that are set-aside to IEE concerns in accordance with HHSAR 326.603–1(d).

(2) The contracting officer shall insert the clause at HHSAR 352.226–6, SUBCONTRACTING LIMITATIONS, in all solicitations and contracts when the contract award is to be made under the authority of the Buy Indian Act.

(3) The contracting officer shall insert the provision at HHSAR 352.226–7, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in all solicitations when the contract award is to be made under the authority of the Buy Indian Act.

326.604–3 Debarment and suspension.

A misrepresentation by an offeror of its status as an IEE, failure to notify the CO of any change in IEE status that would make the contractor ineligible as an IEE, or any violation of the regulations in this part by an offeror or an awardee may lead to debarment or suspension in accordance with FAR 9.406 and 9.407 and HHSAR 309.406 and 309.407.

326.605 Contract Requirements.

326.605–1 Subcontracting limitations.

(a) The CO shall insert FAR clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set-aside for ISBEEs and IEEs.

(b) The CO must also insert the clause 352.226–6, Indian Economic Enterprise Subcontracting Limitations, in all awards to ISBEEs and IEEs pursuant this part.

326.605–2 Performance and payment bonds.

Solicitations requiring performance and payment bonds must conform to FAR Part 28 and authorize use of any of the types of security acceptable in accordance with FAR Subpart 28.2 or section 11 of Public Law 98–449, the Indian Financing Act Amendments of 1984 (25 U.S.C. 47a). In accordance with FAR 28.102 and 25 U.S.C. 47a, the CO may accept alternative forms of security in lieu of performance and payment bonds if a determination is made that such forms of security provide the Government with adequate security for performance and payment.

326.606 Representation by an Indian Economic Enterprise Offeror.

326.606–1 General.

(a) The CO must insert the provision at HHSAR 352.226–7, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in all solicitations regardless of dollar value solicited under HHSAR 326.603–1(c) or (d) and in accordance with this part.

(b) To be considered for an award under HHSAR 326.603–1(c) or (d), an offeror must:

(1) Certify that it meets the definition of ''Indian Economic Enterprise'' in response to a specific solicitation set-aside in accordance with the Buy Indian Act and this part; and

(2) Identify the Indian Tribe(s) upon which the offeror relies for its IEE status.

(c) The enterprise must meet the definition of ''Indian Economic Enterprise'' throughout the following time periods:

(1) At the time an offer is made in response to a solicitation;

(2) At the time of contract award; and

(3) During the full term of the contract.

(d) If, after award, a contractor no longer meets the eligibility requirements as it has certified and as set forth in this section, then the contractor must provide the CO with written notification within 3 calendar days of its failure to comply with the eligibility requirements. The notification must include:

(1) Full disclosure of circumstances causing the contractor to lose eligibility status; and

(2) A description of actions, if any, that must be taken to regain eligibility.

(e) Failure to maintain eligibility under the Buy Indian Act or to provide written notification required by paragraph (d) of this section means that:

(1) The contractor may be declared ineligible for future contract awards under this part;

(2) The CO may consider termination for default of the ongoing contract; and

(3) The CO may pursue debarment or suspension of the contractor.

(f) The CO will review the offeror's representation that it is an IEE in a specific bid or proposal and verify that the Indian Tribe(s) that the offeror identified in the representation is either on the List of Federally Recognized Tribes or is an Alaska Native Corporation. A CO will also investigate the representation if an interested party challenges the IEE representation or if the CO has any other reason to question the representation. The CO may ask the offeror for more information to substantiate the representation. Challenges of and questions concerning a specific representation must be referred to the CO or CCO in accordance with HHSAR 326.607.

(g) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (25 U.S.C. 47 note) does not render an IEE ineligible for contracts awarded under the Buy Indian Act.

326.606–2 Representation provision.

(a) Contracting offices must provide copies of the awardees' IEE representation to any interested parties upon written request. IHS will make awardees' IEE representations available via IHS public sites and/or other means.

(b) Any false or misleading information submitted by an enterprise when submitting an offer in consideration for an award set-aside under the Buy Indian Act may be a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance may be subject to the penalties enumerated in 31 U.S.C. 3729 to 3731 and 18 U.S.C. 287.

(c) The CO shall inform the Head of Contracting Activity, within 10 business days, of all suspected IEE misrepresentation by an offeror or failure to provide written notification of a change in IEE eligibility.

326.606–3 Representation process.

(a) Only IEEs may participate in acquisitions set-aside in accordance with the Buy Indian Act and this part. The procedures in this Part are intended to support responsible IEEs and prevent circumvention or abuse of the Buy Indian Act.

(b) The CO shall review the ownership information furnished under HHSAR 352.226–7(b) and verify that the Indian Tribe(s) identified is either on the List of Federally Recognized Tribes or is an Alaska Native Corporation.

(c) If the CO cannot verify from the offeror submission that the Indian Tribe(s) identified is either on the List of Federally Recognized Tribes or is an Alaska Native Corporation, the CO must allow the offeror to correct information submitted under HHSAR 352.226–7(b). The CO should make every effort to allow the offeror to correct the information. If the requirement is time sensitive the CO must specify to the offeror the time and date by which a response is required.

(1) If the CO determines the offeror is not responsive, the CO must document the circumstances and inform the offeror of the determination.

(2) The CO may ask the appropriate regional Office of the General Counsel to review the IEE representation.

(3) The IEE representation does not relieve the CO of the obligation for determining contractor responsibility, as required by FAR Subpart 9.1.

326.607 Challenges to Representation.

326.607–1 Procedure.

(a) The CO can accept an offeror's written representation of being an ISBEE or IEE (as defined in HHSAR 326.601) only when it is submitted in response to a Sources Sought Notice, Request for Information (RFI) or with an offer in response to a solicitation under the Buy Indian Act. Another interested party may challenge the representation of an offeror or awardee by filing a written challenge.

(b) Upon receipt of the challenge, the CO shall re-verify the representation of the offeror or awardee in accordance with the requirements of this subpart, including the provisions of 326.606.

326.607–2 Receipt of Challenge.

(a) An interested party must file any challenges against an offeror's representation with the cognizant CO.

(b) The challenge must be in writing and must contain the basis for the challenge with accurate, complete, specific and detailed evidence. The evidence must support the allegation that the offeror fails to meet the definition of Indian Economic Enterprise or Indian Small Business Economic Enterprise as defined in HHSAR 326.601 or is otherwise ineligible. The CO will dismiss any challenge that is deemed frivolous or that does not meet the conditions in this section.

(c) To be considered timely, a challenge must be received by the CO no later than 10 calendar days after the basis of challenge is known or should have been known, whichever is earlier.

(1) A challenge may be made orally if it is confirmed in writing within the 10-day period after the basis of challenge is known or should have been known, whichever is earlier.

(2) A written challenge may be delivered by hand, email, or letter postmarked within the 10-day period after the basis of challenge is known or should have been known, whichever is earlier.

(3) A CO's challenge to a certification is always considered timely, whether filed before or after award.

(d) Upon receiving a timely challenge, the CO must:

(1) Notify the challenger of the date it was received, and that the representation of the enterprise being challenged is under consideration; and

(2) Furnish to the offeror (whose representation is being challenged) a request to provide detailed information on its eligibility by certified mail, return receipt requested or email.

(e) Within 3 calendar days after receiving a copy of the challenge and the CO's request for detailed information, the challenged offeror must file, as specified at (d)(2), with the CO a complete statement answering the allegations in the challenge and furnish evidence to support its position on representation. If the offeror does not submit the required material within the 3 calendar days, or another period of time granted by the CO, the CO may assume that the offeror does not intend

to dispute the challenge and must not award to the challenged offeror.

(f) Within 10 calendar days after receiving a challenge, the challenged offeror's response, and any other pertinent information, the CO must determine the representation status of the challenged offeror and notify the challenger and the challenged offeror of the decision by certified mail, return receipt requested or email, and make known to all parties the option to appeal the determination to IHS DAP.

(g) If the representation accompanying an offer is challenged and subsequently upheld by DAP, the written notification of this action must state the reason(s).

326.607–3 Award in the Face of Challenge.

(a) Award of a contract in the face of challenge only may be made on the basis of the CO's written determination that the challenged offeror's representation is valid.

(1) This determination is final unless it is appealed to DAP, and the CO is notified of the appeal before award.

(2) If an award was made before the CO received notice of appeal, the contract is presumed to be valid.

(b) After receiving a challenge involving an offeror being considered for award, the CO must not award the contract until the CO has determined the validity of the representation. Award may be made in the face of a timely challenge when the CO determines in writing that an award must be made to protect the public interest, is urgently required, or a prompt award will otherwise be advantageous to the Government.

(c) If a timely challenge on representation is filed with the CO and received before award in response to a specific offer and solicitation, the CO must notify eligible offerors within one day that the award will be withheld. The CO also may ask eligible offerors to extend the period for acceptance of their proposals.

(d) If a challenge on representation is filed with the CO and received after award in response to a specific offer and solicitation, the CO need not suspend contract performance or terminate the awarded contract unless the CO believes that an award may be invalidated and a delay would prejudice the Government's interest. However, if contract performance is to be suspended, the CO would follow those guidelines as outlined in FAR Part 49.

326.607–4 Challenge Not Timely.

If a CO receives an untimely filed challenge of a representation, the CO must notify the challenger that the challenge cannot be considered on the instant acquisition but will be considered in any future actions. However, the CO may question at any time, before or after award, the representation of an IEE.

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 352 is revised to read as follows:

Authority: 5 U.S.C. 301, 40 U.S.C. 121(c)(2), 42 U.S.C. 2003.

Subpart 352.2—Text of Provisions and Clauses

■ 2. Add §§ 352.226–4 through 352.226–7 to read as follows:

352.226–4 Notice of Indian Small Business Economic Enterprise set-aside.

As prescribed in HHSAR 326.604–2(b)(1), and in lieu of the requirements of 48 CFR 19.508, the Contracting Officer shall insert the following provision:

Notice of Indian Small Business Economic Enterprise Set-Aside

Under the Buy Indian Act, 25 U.S.C. 47, offers are solicited only from Indian Economic Enterprises (HHSAR 326.606) that are also small business concerns. Any acquisition resulting from this solicitation will be from such a concern. As required by HHSAR § 352.226–7(b), offerors shall include a completed Indian Economic Enterprise Representation form in response to Sources Sought Notices, Request for Information (RFI) and as part of the proposal submission. The Indian Economic Enterprise Representation form, available on the IHS DAP public website (*www.IHS.gov/DAP*), shall be included in synopses, presolicitation notices, and solicitations for the acquisitions under the Buy Indian Act. Offers received from enterprises that are not both Indian Economic Enterprises and small business concerns will not be considered and will be rejected.

(End of clause)

352.226–5 Notice of Indian Economic Enterprise set-aside.

As prescribed in HHSAR 326.604–2(e)(2), the Contracting Officer shall insert the following clause:

Notice of Indian Economic Enterprise Set-Aside

(a) *Definitions as used in this clause:*

Alaska Native Claims Settlement Act (ANCSA) means Public Law 92–203 (December 18, 1971), 85 Stat. 688, codified at 43 U.S.C. 1601–1629h.

Indian means a person who is an enrolled member of an Indian Tribe or ''Native'' as defined in the Alaska Native Claims Settlement Act.

Indian Economic Enterprise means any business activity owned by one or more Indians or Indian Tribes that is established for the purpose of profit provided that: The combined Indian or Indian Tribe ownership must constitute not less than 51 percent of the enterprise; the Indians or Indian Tribes must, together, receive at least a majority of the earnings from the contract; and the management and daily business operations of an enterprise must be controlled by one or more individuals who are Indians. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. The enterprise must meet these requirements throughout the following time periods:

(i) At the time an offer is made in response to a written solicitation;

(ii) At the time of the contract award; and

(iii) During the full term of the contract.

Indian Tribe means an Indian Tribe, band, nation, or other recognized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including any Alaska Native village or regional or village corporation under the Alaska Native Claims Settlement Act (Pub. L. 92–203, 85 Stat. 688; 43 U.S.C. 1601).

Representation means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in Subpart 326.606.

(b) *General.* (1) Under the Buy Indian Act, offers are solicited only from Indian Economic Enterprises.

(2) The CO will reject all offers received from ineligible enterprises.

(3) Any award resulting from this solicitation will be made to an Indian Economic Enterprise, as defined in paragraph (a) of this clause.

(c) *Required submissions.* In response to this solicitation, an offeror must also provide the following:

(1) A description of the required percentage of the work/costs to be provided by the offeror over the contract term as required by section 352.226–6, Subcontracting Limitations clause; and

(2) Qualifications of the key personnel (if any) that will be assigned to the contract.

(d) Required assurance. The offeror must provide written assurance to the CO that the offeror is and will remain in compliance with the requirements of this clause. It must do this before the CO awards the Buy Indian Act contract and upon successful and timely completion of the contract, but before the CO accepts the work or product.

(e) Non-responsiveness. Failure to provide the information required by paragraphs (c) and (d) of this clause may cause the CO to find an offer non-responsive and reject it.

(f) Eligibility.

(1) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (25 U.S.C. 47 note) does not render an Indian Economic Enterprise ineligible for contracts awarded under the Buy Indian Act.

(2) If a contractor no longer meets the definition of an Indian Economic Enterprise

after award, the contractor must notify the CO immediately and in writing. The notification must include full disclosure of circumstances causing the contractor to lose eligibility status and a description of any actions that the contractor will take to regain eligibility. Failure to give the CO immediate written notification means that:

(i) The economic enterprise may be declared ineligible for future contract awards under this part; and

(ii) The CO may consider termination for default if it is in the best interest of the government.

(g) Representation. Under the Buy Indian Act, 25 U.S.C. 47, offers are solicited only from Indian Economic Enterprises (326.606). As required by HHSAR 352.226–7(b), offerors shall include a completed Indian Economic Enterprise Representation form in response to Sources Sought Notices, Request for Information (RFI) and as part of the proposal submission. The Indian Economic Enterprise Representation form, available on the IHS DAP public website (*www.IHS.gov/DAP*), shall be included in synopses, presolicitation notices, and solicitations for the acquisitions under the Buy Indian Act. Offers received from enterprises that are not Indian Economic Enterprises shall not be considered.

(End of clause)

352.226–6 Indian Economic Enterprise Subcontracting Limitations

As prescribed in HHSAR 326.604–2(e)(3), the Contracting Officer shall insert the following clause:

Indian Economic Enterprise Subcontracting Limitations

(a) Definitions as used in this clause.

(1) *Indian Economic Enterprise* means any business activity owned by one or more Indians or Indian Tribes that is established for the purpose of profit provided that: The combined Indian or Indian Tribe ownership must constitute not less than 51 percent of the enterprise; the Indians or Indian Tribes must, together, receive at least a majority of the earnings from the contract; and the management and daily business operations of an enterprise must be controlled by one or more individuals who are Indians. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. The enterprise must meet these requirements throughout the following time periods:

(i) At the time an offer is made in response to a written solicitation;

(ii) At the time of the contract award; and

(iii) During the full term of the contract.

(2) *Subcontract* means any contract, as defined in FAR subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(3) *Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) Required Percentages of work by the concern. The contractor must comply with FAR 52.219–14, Limitations on Subcontracting clause in allocating what percentage of work to subcontract. The contractor shall not subcontract work exceeding the subcontract limitations in FAR 52.219–14 to a concern other than a responsible Indian Economic Enterprise.

(c) Any work that an IEE subcontractor does not perform with its own employee shall be considered subcontracted work for the purpose of calculating percentages of subcontract work in accordance with FAR 52.219–14 Limitations on Subcontracting.

(d) Cooperation. The contractor must:

(1) Carry out the requirements of this clause to the fullest extent; and

(2) Cooperate in any study or survey that the CO, Indian Health Service or its agents may conduct to verify the contractor's compliance with this clause.

(e) Incorporation in Subcontracts. The contractor must incorporate the substance of this clause, including this paragraph (e), in all subcontracts for general services, A&E services and construction awarded under this contract.

(End of clause)

352.226–7 Indian Economic Enterprise representation.

As prescribed in HHSAR 326.604–2(e)(4), the Contracting Officer shall insert the following provision:

Indian Economic Enterprise Representation

(a) The offeror must represent as part of its offer that it does meet the definition of Indian Economic Enterprise (IEE) as defined in HHSAR 326.601 and that it intends to meet the definition of an IEE throughout the performance of the contract. The offeror must notify the contracting officer immediately, via email, if there is any ownership change affecting compliance with this representation.

(b) The representation must be made on the designated IHS Indian Economic Enterprise Representation form or any successor forms through which the offeror will certify that the ownership requirements defined by HHSAR 326.601 are met.

(c) Any false or misleading information submitted by an enterprise when submitting an offer in consideration for an award set-aside under the Buy Indian Act is a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance are subject to the penalties enumerated in 31 U.S.C. 3729 to 3731 and 18 U.S.C. 287.

(End of provision)

Dated: December 22, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–28156 Filed 1–12–22; 8:45 am]

BILLING CODE 4160–01–P

Proposed Rules

Federal Register

Vol. 87, No. 9

Thursday, January 13, 2022

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

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS22–01]

Appraisal Subcommittee; Appraiser Regulation; Temporary Waiver Requests

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) proposes to amend existing rules of practice and procedure governing temporary waiver proceedings, which were promulgated in 1992 pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). The proposed amendments are intended to provide for greater transparency and clarity on temporary waiver proceedings.

DATES: Comments must be received on or before March 14, 2022.

ADDRESSES: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number AS22–01, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Click on the ''Support'' button on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: webmaster@asc.gov.* Include the docket number in the subject line of the message.
- *Mail:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.
- *Hand Delivery/Courier:* 1325 G Street NW, Suite 500, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those comments on the *Regulations.gov* website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. At the close of the comment period, all public comments will also be made available on the ASC's website at *https://www.asc.gov* (follow link in ''What's New'') as submitted, unless modified for technical reasons.

You may review comments and other related materials that pertain to this rulemaking action by the following method:

- *Viewing Comments Electronically:* Go to *https://www.regulations.gov.* Enter ''Docket ID AS22–01'' in the Search box and click ''Search.'' Click on the ''Support'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Lori Schuster, Management and Program Analyst, *lori@asc.gov,* (202) 595–7578, or Alice M. Ritter, General Counsel, *alice@asc.gov,* (202) 595–7577, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of Title XI [1] is ''to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions [FRTs] are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.'' [2]

Title XI requires that real property appraisals performed in connection with FRTs be performed in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP) [3] as promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. The Federal financial institutions regulatory agencies' appraisal regulations require appraisals for FRTs to meet these minimum appraisal standards as evidenced by USPAP.[4] Title XI also requires that certified and licensed appraisers meet the minimum qualification criteria as set forth in *The Real Property Appraiser Qualification Criteria* (AQB Criteria) issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.[5] The State appraiser regulatory agencies enforce these federal minimum requirements for credentialed appraisers in their respective States and are subject to federal oversight by the ASC.[6]

Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis, subject to approval of the FFIEC:

> any requirement relating to certification or licensing of a person to perform appraisals under [Title XI] if the [ASC] or a [State appraiser regulatory agency] makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with [FRTs] in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals.

[1] The ASC was established by Title XI. The ASC Board consists of seven members. Five members are designated by the heads of the FFIEC federal member agencies (Board of Governors of the Federal Reserve System [Board], Bureau of Consumer Financial Protection [Bureau], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

[2] Title XI § 1101. *See also,* 12 U.S.C. 3331.

[3] Title XI § 1109(1). *See also,* 12 U.S.C. 3339(1).

[4] Title XI § 1121(4), 12 U.S.C. 3350, implemented by the Office of the Comptroller of the Currency: 12 CFR 34.44; Federal Reserve Board: 12 CFR 225.64; Federal Deposit Insurance Corporation: 12 CFR 323.4; and National Credit Union Administration: 12 CFR 722.4.

[5] Title XI § 1116(a) and (c). *See also,* 12 U.S.C. 3345(a) and (c).

[6] Title XI § 1118. *See also,* 12 U.S.C. 3347. ''State appraiser regulatory agencies'' are referred to in the proposed rule as ''State Appraisal Agencies.''

A waiver terminates when the [ASC] determines that such significant delays have been eliminated.[7]

Congress intended that the ASC exercise this waiver authority ''cautiously.'' [8]

The ASC published rules of practice and procedure governing temporary waiver proceedings in 1992.[9] The ASC has ordered temporary waiver relief on two occasions. The first was for the Commonwealth of the Northern Mariana Islands in February 1993 (preceded by an interim order for relief issued in December 1992). The second was in August 2019 for the State of North Dakota (which was extended in part for one additional year in 2020).

Under the existing rules of practice and procedure, when the ASC receives a request from a State appraiser regulatory agency that meets the requirements set forth in 12 CFR 1102.2, *Requirements for requests,* including a written duly authorized determination that there is a scarcity of certified or licensed appraisers leading to significant delays in obtaining appraisals in FRTs, the request is published promptly in the **Federal Register** for comment. In the absence of such a written determination, the State appraiser regulatory agency must ask the ASC for such a determination. When the ASC receives a submission pursuant to 12 CFR 1102.3, *Other requests and information submissions,* the ASC has the discretion to determine whether or not to initiate a temporary waiver proceeding. If the ASC makes a determination to initiate a temporary waiver proceeding, the ASC will promptly publish notice of the proceeding in the **Federal Register**. Within 45 calendar days of the date of publication in the **Federal Register**, the existing rules provide that the ASC will grant or deny a waiver, in whole or in part, by Order. The ASC must seek FFIEC approval if the waiver is granted, and the waiver cannot take effect unless approved by the FFIEC.

Application of the existing rules of practice and procedure in the present day led the ASC to recognize there may be advantages in proposing revisions to the existing rules to define terms and provide greater clarity on the proceedings. The ASC also believes there may be advantages in proposing revisions to the timeframes in the existing rules of practice and procedure (as established in 1992 to accommodate newly formed State appraiser regulatory agencies) to be more conducive to deliberation by the ASC or FFIEC. Accordingly, the ASC proposes to amend the existing rules of practice and procedure as set forth below. The ASC created a flow chart for temporary waiver proceedings as set forth in this notice of proposed rulemaking: *https://www.asc.gov/Documents/FedralRegisterDocuments/Temporary%20Waiver%20Flow%20Chart%20for%20NPRM%20-%20Docket%20No.%20AS22-01.pdf.*

The ASC is also proposing interpretations of several of the terms used in § 1119(b) of Title XI. These interpretations are proposed to be included in the ''definitions'' section of the rule.

Though neither procedural rules nor published agency interpretations of their statutory authority require notice and comment under the Administrative Procedure Act (APA),[10] the ASC is voluntarily submitting this proposed rule and interpretations for public comment in order to seek feedback from interested parties.

II. The Proposed Rule

Authority, Purpose, and Scope

Proposed § 1102.1 would clarify the purpose and scope of the processes available for ASC consideration of temporary waiver relief by making a clear distinction between: (1) A request from a State appraiser regulatory agency accompanied by a written determination, referred to in the proposed rule as a ''Request for Temporary Waiver''; and (2) information received from other persons or entities (which could include a State appraiser regulatory agency) referred to in the proposed rule as a ''Petition.'' As subsequent sections in the proposed amended rule clarify, the procedure followed varies depending on whether the ASC has received a Request for Temporary Waiver or a Petition requesting that the ASC initiate a temporary waiver proceeding.

The basis for this distinction is in the statute itself. Section 1119(b) of Title XI authorizes the ASC to grant a temporary waiver only when the ASC or a State appraiser regulatory agency has made the statutorily required written determination that: (1) There is a scarcity of certified or licensed appraisers to perform appraisals in connection with FRTs in a State, or in any geographical political subdivision of a State; and (2) such scarcity is leading to significant delays in the performance of such appraisals for FRTs.[11] Accordingly, the proposed rules seek to clarify the procedural differences in processing a Request for Temporary Waiver accompanied by a written determination as compared to a Petition requesting the ASC exercise its discretion to initiate a temporary waiver proceeding.

Definitions

Proposed § 1102.2 would establish definitions for the following terms:

Federally related transaction (FRT). Proposed § 1102.2(a) proposes to define *federally related transaction (FRT)* to mean any real estate-related financial transaction which: (a) A Federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

Performance of appraisals. Proposed § 1102.2(b) proposes to define *performance of appraisals* to mean that the appraisal service requested of an appraiser has been provided to the lender or appraisal management company (AMC).

Petition. Proposed § 1102.2(c) proposes to define *Petition* to mean information submitted to the ASC by the Federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency (defined below), asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in proposed § 1102.4.

Request for Temporary Waiver. Proposed § 1102.2(d) proposes to define *Request for Temporary Waiver* to mean information submitted to the ASC with a written determination from a State Appraisal Agency (defined below) requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in proposed § 1102.3.

Scarcity of certified or licensed appraisers. Proposed § 1102.2(e) proposes to define *scarcity of certified*

[7] Title XI § 1119(b). *See also,* 12 U.S.C. 3348(b).

[8] House Comm. on Banking, Finance and Urban Affairs, Report Together with Additional Supplemental, Minority, Individual, and Dissenting Views, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, H.R. Rep. No. 101–54 Part 1, 101st Cong., 1st Sess., at 482–83.

[9] 12 CFR part 1102, subpart A.

[10] 5 U.S.C. 553(b).

[11] Title XI § 1119(b). *See also,* 12 U.S.C. 3348(b).

or licensed appraisers to mean the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.

Significant delays in the performance of appraisals. Proposed § 1102.2(f) proposes to define *significant delays in the performance of appraisals* to mean delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated federally related transactions based on factors such as geographic location (*e.g.,* rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (*e.g.,* inability to access the subject property).

State Appraisal Agency. Proposed § 1102.2(g) proposes to define *State Appraisal Agency* to mean the State appraiser certifying and licensing agency.[12]

Temporary waiver. Proposed § 1102.2(h) proposes to define *Temporary waiver* to mean a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive the requirement for a USPAP-compliant appraisal.[13]

Request for Temporary Waiver

Proposed § 1102.3 clarifies: Who can file a Request for Temporary Waiver; what a Request for Temporary Waiver should contain; ASC review of a Request for Temporary Waiver for purposes of determining sufficiency of the document's content and receipt by the ASC; and what is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State Appraisal Agency.

Proposed § 1102.3(a) states that the State Appraisal Agency for the State in which temporary waiver relief is sought may file a Request for Temporary Waiver as distinguished from a Petition from other persons or entities as proposed in § 1102.4. A State Appraisal Agency may alternatively submit a Petition as set forth in proposed § 1102.4. The ASC believes this is consistent with the intent of the existing rules.[14]

Proposed § 1102.3(b) states that a Request for Temporary Waiver will not be deemed to have been received by the ASC unless it fully and accurately sets out:

(1) A written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;

(2) the requirement(s) of State law from which relief is being sought;

(3) the nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(4) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(5) how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and

(6) meaningful suggestions and recommendations for remedying the situation.

The existing rules state that in the absence of a written determination by the State Appraisal Agency, it must ask the ASC for such a determination. That language is removed from this proposed subsection for the reason that if the ASC were to make such a determination when asked to do so by a State Appraisal Agency, it would be processed as an ASC Order initiating a temporary waiver proceeding pursuant to proposed § 1102.5(a).

The proposed amendments to this subsection seek to provide clarity on information that should be included in a Request for Temporary Waiver and to remove redundancy from that information. For example, the existing rules, in addition to the above, ask for ''[a] description of all significant problems currently being encountered in efforts to comply with [T]itle XI'' which would be captured in the information sought in proposed § 1102.3(b). The proposed amendments also modify the requirement for a State Appraisal Agency to provide ''a specific plan for expeditiously alleviating the scarcity and service delays'' to ''meaningful suggestions and recommendations for remedying the situation'' recognizing that the situation creating scarcity and delay may be completely outside the control of the State Appraisal Agency.

The proposed amendments include the phrase ''supporting documentation, statistical or otherwise verifiable.'' This is intended to provide clarification as to what a Request for Temporary Waiver should include to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State, and what the ASC will consider in determining receipt (*see* proposed § 1102.3(c) below). A Request for Temporary Waiver should include clear and specific data to support a claim that there is a scarcity of appraisers leading to significant delays in the performance of covered appraisals. The data supporting such a claim may vary from location to location and situation to situation. Information about the following could assist the ASC in reviewing a Request for Temporary Waiver:

1. Geography—location(s) of the scarcity leading to significant delay.

2. Transactions—types of FRTs impacted (*i.e.,* property and transaction type(s) and transaction amount(s)).

3. Time—length of time for waiver requested.

Proposed § 1102.3(b) includes that a Request for Temporary Waiver address how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted.

Proposed § 1102.3(c) is intended to clarify that a Request for Temporary Waiver shall be deemed received for purposes of publication in the **Federal Register** for notice and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b).

Proposed § 1102.3(d) sets forth what is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State Appraisal Agency. In either case, written notice from the ASC would be required with an explanation for such a determination.

[12] Title XI § 1121(1). *See also,* 12 U.S.C. 3350(1).

[13] The regulations of the Federal financial institutions regulatory agencies (agencies' appraisal regulations) require appraisals for FRTs to meet minimum appraisal standards including conformance to generally accepted appraisal standards as evidenced by USPAP. The ASC cannot waive the requirement for USPAP-compliant appraisals where applicable under the agencies' appraisal regulations. Therefore, when a waiver is in effect, appraisals that comply with the agencies' appraisal regulations (including conformance with USPAP) would still be required when applicable under those regulations, but they could be performed by persons who are not credentialed. (*See* 12 CFR 34.44(a); 12 CFR 225.64(a); 12 CFR 323.4(a); and 12 CFR 722.4(a)).

[14] ''The rules provide persons other than the State appraisal regulatory agencies ('State agencies') with the opportunity to submit informational submissions to the ASC. They also may request that the ASC exercise its discretionary authority to provide temporary waiver relief. The ASC will consider such submissions and requests in determining whether it should initiate a temporary waiver proceeding.'' 57 **Federal Register** 10980 (April 1992).

Petition Requesting the ASC Initiate a Temporary Waiver Proceeding

Proposed § 1102.4 clarifies: Who can file a Petition requesting that the ASC exercise its discretionary authority to issue an Order, thereby initiating a temporary waiver proceeding; what a Petition should contain; the need to forward a copy of a Petition to the State Appraisal Agency of the impacted State; what the ASC may review for purposes of determining whether the Petition may be processed for further action; what is required in the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition,* and thereby is either denied or referred back to the petitioner; and what further action may be taken.

Proposed § 1102.4(a) states that a Petition may be filed by the Federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency.

Proposed § 1102.4(b) states that a Petition should include:

(1) Information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and

(2) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

A Petition may also include meaningful suggestions and recommendations for remedying the situation.

The existing rules generally request the same information from State Appraisal Agencies as they do from other persons or institutions seeking consideration of temporary waiver relief (with the exception of ''a specific plan to alleviate scarcity and service delays'' which is unique to State Appraisal Agencies). The proposed amendments to this subsection seek to provide clarity on information that should be included in a Petition while easing the expectation that a Petition contain the specificity of a Request for Temporary Waiver from a State Appraisal Agency.

The proposed amendments include the phrase ''supporting documentation, statistical or otherwise verifiable.'' This is intended to clarify what a Petition should include to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State, and what the ASC will consider in determining whether to process a Petition for further action (*see* proposed § 1102.4(d) below).

Proposed § 1102.4(c) clarifies the existing requirement for a petitioner to provide a copy of their Petition to the State Appraisal Agency, unless the party filing the Petition is the State Appraisal Agency.

Proposed § 1102.4(d) provides that a Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of proposed § 1102.4(b) and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

Proposed § 1102.4(e) sets forth what is required in the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition,* and thereby is either denied or referred back to the petitioner. In either case, written notice from the ASC would be required with an explanation for such a determination.

Proposed § 1102.4(f) states that if a Petition is processed for further action, the ASC may initially refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for evaluation and further study, or the ASC may take further action without referring a Petition to the State Appraisal Agency. Alternatively, a Petition may be denied or referred back to the petitioner for further action.

Proposed § 1102.4(g) states that in the event the State Appraisal Agency opts to conduct evaluation and further study on a Petition, the State Appraisal Agency may issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State. Assuming the State Appraisal Agency has addressed the items that would be included in a Request for Temporary Waiver as set forth in proposed § 1102.3(b), the Petition would now be subject to the procedures and requirements for a Request for Temporary Waiver.

The State Appraisal Agency could alternatively recommend that the ASC take no further action on the Petition, or moreover decline to conduct evaluation and further study on a Petition. In either case, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding.

Proposed § 1102.5 clarifies that an Order initiating a temporary waiver proceeding may be in response to a Petition or may be initiated by the ASC without a Petition having been submitted. In either event, such an Order would include consideration of certain items that would be addressed in a Request for Temporary Waiver. (*See e.g.,* § 1102.3(b)(2)–(6), *Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a **Federal Register** notice in accordance with § 1102.6(b). This is consistent with the existing rules of practice and procedure.

Notice and Comment

Proposed § 1102.6 does not vary in substance from the existing rules of practice and procedure, § 1102.4, *Notice and comment,* which provides for a 30-day notice and comment period on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding.

ASC Determination

Proposed § 1102.7 would expand the existing 45-day deadline, which commences on the date of publication above, for the ASC to make a determination. With respect to recent requests for temporary waivers, or other information submissions requesting the ASC initiate a proceeding, the 45-day turnaround limited the time available to process and evaluate information submitted, including comments received during the notice and comment period.

The ASC believes that the 45-day time period was imposed in 1992 primarily because States were still in the process of setting up State appraiser regulatory programs, and absent a temporary waiver, could have been left without any means to provide appraisals for FRTs. That is not the case today. Even absent a temporary waiver, a State would likely be able to continue to provide appraisals, especially given the use of temporary practice permits and reciprocity.

The ASC proposes to expand the timeframe for an ASC determination, on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding, from 45 calendar days to 90 calendar days from the date of publication in the **Federal Register** to allow sufficient time for thorough processing and consideration. Proposed § 1102.7 also seeks to clarify that in the event the ASC issues an Order approving a temporary waiver, which is only effective upon FFIEC approval of the waiver, that the FFIEC consideration of the waiver would not be subject to

the ASC's proposed 90-day timeframe for a determination.

The existing rules of practice and procedure allow the ASC to issue an interim approval Order simultaneously with a publication for notice and comment, and apply when the ASC determines that an emergency exists. A waiver approved by such an Order also requires approval by the FFIEC. For the reasons stated above, the ASC believes the existing rules were intended to accommodate nascent State Programs, which is not applicable today. States now have options to cope with an emergency that were not available when the existing rules of practice and procedure were finalized. Additionally, the ASC believes that notice and comment is critical to thorough processing of a Request for Temporary Waiver or a Petition. Therefore, as proposed, § 1102.6 would eliminate the interim Order from the rules of practice and procedure.

Waiver Extension

Proposed § 1102.8 does not vary in substance from the existing rules of practice and procedure, § 1102.6, *Waiver extension.*

Waiver Termination

Proposed § 1102.9 would clarify the distinction between mandatory waiver termination versus discretionary waiver termination. Section 1119(b) of Title XI states, ''[t]he waiver terminates when the [ASC] determines that such significant delays have been eliminated.'' Therefore, proposed § 1102.9 would require termination in the event of such a finding by the ASC. Proposed § 1102.9 would retain the provision for a discretionary termination in the event the ASC finds that the terms and conditions of the waiver Order are not being satisfied and the procedure for the ASC's publication in the **Federal Register** for notice and comment in the case of discretionary waiver termination, which does not vary in substance from the existing rules of practice and procedure, § 1102.7, *Waiver termination.* In the absence of further ASC action to the contrary, the finding of a discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

III. Request for Comment

The ASC requests comment on all aspects of the proposed amendments to the existing rules of practice and procedure governing temporary waiver proceedings.

IV. Regulatory Requirements

The ASC has concluded that, if finalized, the proposed amendments to the procedural rule would, like the current rule, constitute a rule of agency organization, procedure, or practice, and that they would therefore be exempt from the notice-and-comment rulemaking requirements of the APA.[15] For the same reason, the proposed amendments would not be subject to the 30-day delayed effective date for substantive rules under the APA.[16] Moreover, agency interpretations of terms used in their statutory authority are exempt from the notice and comment requirement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[17]

Paperwork Reduction Act

There is no collection of information that would be required by this proposed rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The Paperwork Reduction Act of 1995 [18] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The ASC has reviewed this notice of proposed rulemaking and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this proposed rule.

Unfunded Mandates Reform Act of 1995 Determination

This proposed rule if finalized would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule would amend the existing rule to provide definitions of terms and greater clarity on the proceedings for a temporary waiver. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Appraisal Management Company Registry Fees, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

[15] 5 U.S.C. 553(b).

[16] 5 U.S.C. 553(d).

[17] 5 U.S.C. 603(a) and 604(a).

[18] 44 U.S.C. 3501–3521.

Authority and Issuance

For the reasons set forth in the preamble, the ASC proposes to amend 12 CFR part 1102 as follows:

PART 1102—APPRAISER REGULATION

■ 1. The authority citation for part 1102, subpart A continues to read as follows:

Authority: 12 U.S.C. 3348(b).

■ 2. Revise part 1102, subpart A to read as follows:

Subpart A—Temporary Waiver Requests

Sec.

1102.1 Authority, purpose, and scope.
1102.2 Definitions.
1102.3 Request for Temporary Waiver.
1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.
1102.5 Order initiating a temporary waiver proceeding.
1102.6 Notice and comment.
1102.7 ASC determination.
1102.8 Waiver extension.
1102.9 Waiver termination.

§ 1102.1 Authority, purpose and scope.

(a) *Authority.* This subpart is issued under § 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI; 12 U.S.C. 3348(b)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under § 1119(b) of Title XI (12 U.S.C. 3348(b)). These procedures apply whenever a Request for Temporary Waiver is submitted to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) for a temporary waiver of any requirement relating to State certification or licensing (credentialing requirements) of persons eligible to perform appraisals for federally related transactions (FRTs) under Title XI. These procedures also apply in the event the ASC receives a Petition requesting the ASC initiate a temporary waiver proceeding. This subpart also contains the ASC's interpretations of terms used in § 1119(b) of Title XI.

§ 1102.2 Definitions.

For purposes of this subpart:

(a) Federally related transaction (FRT) means any real estate-related financial transaction which: (a) A Federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. 3350), implemented by the Office

of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

(b) Performance of appraisals means the appraisal service requested of an appraiser is provided to the lender or appraisal management company (AMC).

(c) Petition means information submitted to the ASC by the Federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in § 1102.4.

(d) Request for Temporary Waiver means information submitted to the ASC by a State Appraisal Agency with a written determination requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in § 1102.3.

(e) Scarcity of certified or licensed appraisers means the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.

(f) Significant delays in the performance of appraisals means delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated FRTs based on factors such as geographic location (*e.g.,* rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (*e.g.,* inability to access the subject property).

(g) State Appraisal Agency means the State appraiser certifying and licensing agency.[19]

(h) Temporary waiver means a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive the requirement for a *Uniform Standards of Professional Appraisal Practice* (USPAP)-compliant appraisal.

[19] Title XI § 1121(1). *See also,* 12 U.S.C. 3350(1).

§ 1102.3 Request for Temporary Waiver.

(a) *Who can file a Request for Temporary Waiver.* The State Appraisal Agency for the State in which the temporary waiver relief is sought may file a Request for Temporary Waiver.

(b) *Contents and Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver from a State Appraisal Agency will not be deemed received by the ASC unless it fully and accurately sets out:

(1) A written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;

(2) The requirement(s) of State law from which relief is being sought;

(3) The nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(4) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(5) How complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and

(6) Meaningful suggestions and recommendations for remedying the situation.

(c) *Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver shall be deemed received for purposes of publication in the **Federal Register** for notice and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver,* to support that a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(d) *Deny or Refer back.* In the event the Request for Temporary Waiver is not deemed received, it may be denied in its entirety or referred back to the State Appraisal Agency for further action. In either case, the ASC shall provide written notice to the State Appraisal Agency providing an explanation for the determination.

§ 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.

(a) *Who can file a Petition requesting the ASC initiate a temporary waiver proceeding.* The Federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, may petition the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding.

(b) *Contents of a Petition.* (1) A Petition should include:

(i) Information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State;

and

(ii) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

(2) A Petition may also include meaningful suggestions and recommendations for remedying the situation.

(c) *Copy of Petition to State Appraisal Agency.* In the case of a Petition from a party other than a State Appraisal Agency, the party must promptly provide a copy of its Petition to the State Appraisal Agency.

(d) *ASC review of a Petition.* A Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of § 1102.4(b), *Contents of a Petition,* and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(e) *Deny or Refer back.* In the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition,* it may be denied in its entirety or referred back to the petitioner for further action. In either event, the ASC shall provide written notice to the petitioner providing an explanation for the determination.

(f) *Further action on a Petition.* If the ASC determines that a Petition should be processed for further action, at its discretion the ASC may:

(1) Refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for further evaluation and study, to include items that would be addressed in a Request for Temporary Waiver (*see* § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*); or

(2) Take further action without referring the Petition to the State Appraisal Agency.

(g) *State Appraisal Agency Action.*

(1) In the event the State Appraisal Agency opts to conduct further evaluation and study on a Petition, the State Appraisal Agency may:

(i) Issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State (or request that the ASC issue such a written determination), in which case, the procedures and requirements of § 1102.3 and 1102.6(a) shall apply; or

(ii) Recommend that the ASC take no further action.

(2) In the event the State Appraisal Agency either recommends no further action or declines to conduct further evaluation and study on a Petition, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding in accordance with § 1102.5(a).

§ 1102.5 Order initiating a temporary waiver proceeding.

The ASC may exercise discretion in determining whether to issue an Order initiating a temporary waiver proceeding in response to a Petition, or alternatively, the ASC may exercise discretion to initiate a temporary waiver proceeding on its own initiative without a Petition being submitted. In either event, such an Order would include consideration of certain items that would be addressed in a Request for Temporary Waiver. (*See e.g.,* § 1102.3(b)(2) through (6), *Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a **Federal Register** notice in accordance with § 1102.6(b).

§ 1102.6 Notice and comment.

The ASC shall publish promptly in the **Federal Register** a notice respecting:

(a) A received Request for Temporary Waiver (*see* § 1102.3(c)); or

(b) An ASC Order initiating a temporary waiver proceeding (*see* § 1102.5).

The notice of a received Request for Temporary Waiver or ASC Order initiating a temporary waiver proceeding shall contain a concise statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views, and arguments.

§ 1102.7 ASC determination.

(a) *Order by the ASC.* Within 90 calendar days of the date of publication of the notice in the **Federal Register**, the ASC, by Order, shall either grant or deny a waiver, in whole or in part, and upon specified terms and conditions, including provisions for waiver termination. The Order shall be published in the **Federal Register**, which in the case of an Order approving a waiver, shall only be published after FFIEC approval of the waiver (*see* paragraph (b) of this section). Such Order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding(s).

(b) *Approval by the FFIEC.* Any ASC Order approving a waiver shall be effective only upon FFIEC approval of the waiver. FFIEC consideration of a waiver is not subject to the ASC's 90-day timeframe for a determination.

§ 1102.8 Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.6, 1102.7 and 1102.9 of this subpart. A State Appraisal Agency also may seek an extension of temporary waiver relief by forwarding an additional written Request for Temporary Waiver to the ASC. A request for an extension from a State Appraisal Agency shall be subject to all the requirements of this subpart.

§ 1102.9 Waiver termination.

(a) *Mandatory waiver termination.* The ASC shall terminate a temporary waiver Order when the ASC determines that significant delays in the performance of appraisals by certified or licensed appraisers no longer exist.

(b) *Discretionary waiver termination.* The ASC at any time may terminate a waiver Order on the finding that the terms and conditions of the waiver Order are not being satisfied. In the case of a discretionary waiver termination, the ASC shall publish a finding of waiver termination promptly in the **Federal Register**, giving interested persons no less than 30 calendar days from publication in which to submit written data, views, and arguments. In the absence of further ASC action to the contrary, the finding of discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

By the Appraisal Subcommittee.

Dated: January 6, 2022.

Tim Segerson,

Chairman.

[FR Doc. 2022–00342 Filed 1–12–22; 8:45 am]

BILLING CODE 6700–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1176; Project Identifier MCAI–2021–00755–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model SA330J helicopters. This proposed AD was prompted by a review of Model EC225LP helicopter data that revealed potential tightening torque loss of the attachment screws of the upper deck fittings of the three main gearbox (MGB) suspension bars. Due to design similarities, the MGB right-hand (RH) rear fittings and MGB RH rear fitting attachment screws on Model SA330J helicopters could also be affected. Additional analysis confirmed that the service life limit (life limit) (SLL) for these affected MGB RH rear fittings needs to be reduced for helicopters on which these affected parts were operated concurrently with metallic main rotor blades installed. This proposed AD would require determining the damage value and SLL of each affected MGB RH rear fitting, replacing each affected MGB RH rear fitting with a new part, and replacing the MGB RH rear fitting attachment screws, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 28, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *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. This EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1176.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1176; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1176; Project Identifier MCAI–2021–00755–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0152R1, dated July 20, 2021 (EASA AD 2021–0152R1), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale, Sud Aviation) Model SA 330 J helicopters, all serial numbers, which were modified in service in accordance with the instructions of Eurocopter France Service Bulletin (SB) No. 01.20 (part of which is the in-service retrofit Modification (Mod) 07 40043), except those on which each affected part (as defined in EASA AD 2021–0152R1) was replaced with a new part (not previously installed) during embodiment of Eurocopter France SB No. 01.20 in service.

This proposed AD was prompted by a review of Model EC225LP helicopter in-service data that revealed potential tightening torque loss of the attachment screws of the upper deck fittings of the three MGB suspension bars. The FAA issued AD 2020–06–12, Amendment 39–19881 (85 FR 19077, April 6, 2020) to address the unsafe condition on Model EC225LP helicopters). Due to design similarities, the MGB RH rear fittings and MGB RH rear fitting attachment screws on Model SA330J helicopters could also be affected. Additional analysis confirmed that the SLL for these affected MGB RH rear fittings needs to be reduced for helicopters on which these affected parts were operated concurrently with metallic main rotor blades (pre-Airbus Helicopters Modification 07 40043) installed. Airbus Helicopters Modification 07 40043 introduced the installation of composite main rotor blades.

The FAA is proposing this AD to address tightening torque loss of the attachment screws of the upper deck fittings of the three MGB suspension bars. The unsafe condition, if not addressed, could result in structural failure of the MGB RH rear fittings and MGB RH rear fitting attachment screws, resulting in detachment of the MGB suspension bars and consequent loss of control of the helicopter. See EASA AD 2021–0152R1 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0152R1 requires determining the damage value of each affected MGB RH rear fitting by calculating the damage caused during the time each affected part was operated concurrently with metallic main rotor blades installed on the helicopter, calculating the SLL for each affected MGB RH rear fitting, and eventually replacing each affected MGB RH rear fitting and the MGB RH rear fitting attachment screws with new parts.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0152R1, described previously, as incorporated by reference, except for any differences

identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0152R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0152R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0152R1 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0152R1. Service information referenced in EASA AD 2021–0152R1 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1176 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 15 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators'
Determine damage value and SLL	1 work-hour × $85 per hour = $85	$0	$85	$1,275
Replace parts	8 work-hours × $85 per hour = $680	7,540	8,220	123,300

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2021–1176; Project Identifier MCAI–2021–00755–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 28, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model SA330J helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0152R1, dated July 20, 2021 (EASA AD 2021–0152R1).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6300, Main Rotor Drive System.

(e) Unsafe Condition

This AD was prompted by a review of Airbus Helicopters Model EC225LP helicopter data that revealed potential tightening torque loss of the attachment screws of the upper deck fittings of the three main gearbox (MGB) suspension bars. Due to design similarities, the MGB right-hand (RH) rear fittings and MGB RH rear fitting attachment screws on Model SA330J helicopters could also be affected. Additional analysis confirmed that the service life limit (life limit) (SLL) for the affected MGB RH rear fittings needs to be reduced for helicopters on which these affected parts were operated concurrently with metallic main rotor blades installed. The FAA is issuing this AD to address tightening torque loss of the attachment screws of the upper deck fittings of the three MGB suspension bars. The unsafe condition, if not addressed, could result in structural failure of the MGB RH rear fittings and MGB RH rear fitting attachment screws, resulting in detachment of the MGB suspension bars and consequent 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 2021–0152R1.

(h) Exceptions to EASA AD 2021–0152R1

(1) Where EASA AD 2021–0152R1 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0152R1 refers to July 9, 2021 (the effective date of EASA AD 2021–0152, dated June 25, 2021), this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2021–0152R1 specifies discarding parts, this AD requires removing those parts from service.

(4) Although the service information referenced in EASA AD 2021–0152R1 specifies that ''The work must be performed on the helicopter by the operator.'' this AD does not require that the operator perform the work.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0152R1.

(6) The preliminary steps specified in paragraph 3.B.1. of the service information referenced in EASA AD 2021–0152R1 are not required for compliance with this AD.

(7) Although the service information referenced in EASA AD 2021–0152R1 specifies contacting Airbus Helicopters if the time since new (TSN) is unknown at the retrofit date, this AD requires determining the damage value and the SLL of each affected part but does not require contacting Airbus Helicopters if the TSN is unknown at the retrofit date.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0152R1 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)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

(1) For EASA AD 2021–0152R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1176.

(2) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

Issued on January 4, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–00127 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1163; Airspace Docket No. 19–AAL–38]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–369; Bethel, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–369 in the vicinity of Bethel, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before February 28, 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–2021–1163; Airspace Docket No. 19–AAL–38 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/.* 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* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, 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 expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

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–2021–1163; Airspace Docket No. 19–AAL–38) 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–2021–1163; Airspace Docket No. 19–AAL–38''. 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. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **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 Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198.

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.

Background

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

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored Airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum En route Altitude (MEA) or Global Navigation Satellite System Minimum En route Altitude (GNSS MEA); (b) the replacement of the colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA proposes to establish RNAV route T–369 between the Bethel, AK, (BET) VHF Omnidirectional Radar and Tactical Air Navigational System (VORTAC) and the Nome, AK, (OME) VHF Omnidirectional Radar/Distance Measuring Equipment (VOR/DME). The intent of this proposal is to support future decommissioning of the Oscarville, AK, (OSE); the St. Mary's, AK, (SMA); and the Fort Davis, AK, (FDV) NDBs. The proposed route would provide an alternative to Colored airway B–27, with lower GNSS MEAs, while ensuring continuous two-way VHF communications throughout.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–369 in the vicinity of Bethel, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–369: The FAA proposes to establish T–369 from the Bethel, AK, (BET) VORTAC and the Nome, AK, (OME) VOR/DME.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV listed in this document would 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 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 6011 United States Area Navigation Routes.

* * * * *

T–369 BETHEL, AK TO NOME, AK [NEW]

Bethel, AK (BET)	VORTAC	(Lat. 60°47′05.41″ N, long. 161°49′27.59″ W)
JOPES, AK	WP	(Lat. 62°03′33.30″ N, long. 163°17′07.68″ W)
Nome, AK (OME)	VOR/DME	(Lat. 64°29′06.39″ N, long. 165°15′11.43″ W)

* * * * *

Issued in Washington, DC, on January 3, 2022.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2022–00005 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1191; Airspace Docket No. 21–ASO–40]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Iuka, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface to accommodate Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Iuka Airport, Iuka, MS. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before February 28, 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 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–1191; Airspace Docket No. 21–ASO–40 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/.* 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* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on 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 (Docket No. FAA–2021–1191 and Airspace Docket No. 21–ASO–40) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons 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–2021–1191 Docket No. 21–ASO–40.'' 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 document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, 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 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 proposes an amendment to 14 CFR part 71 to establish Class E airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Iuka Airport to accommodate RNAV SIAPs serving the airport.

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

Environmental Review

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

Lists 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 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 MS E5 Iuka, MS [NEW]

Iuka Airport, MS
(Lat. 36°46′24″ N, long. 88°09′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Iuka Airport.

Issued in College Park, Georgia, on January 4, 2022.

Matthew N. Cathcart,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–00076 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1157; Airspace Docket No. 19–AAL–36]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–367; St. Mary's, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–367 in the vicinity of St. Mary's, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before February 28, 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–2021–1157; Airspace Docket No. 19–AAL–36 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/.* 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* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, 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 expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

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–2021–1157; Airspace Docket No. 19–AAL–36) 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–2021–1157; Airspace Docket No. 19–AAL–36''. 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. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **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 Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

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

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored Airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum En route Altitude (MEA) or Global Navigation Satellite System Minimum En route Altitude (GNSS MEA); (b) the replacement of the colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA proposes to establish RNAV route T–367 between two newly established waypoints (WP), the JOPES, AK, WP over St. Mary's Airport (KSM), Alaska, to the CABGI, AK, WP over Cape Lisburne LRRS Airport (LUR), Alaska. The proposed route would provide an alternative to Colored airways A–6, B–3, and B–2 to allow for lower GNSS MEAs with continuous two-way VHF voice communications. Additionally, the proposed route would support the future decommissioning of the St. Mary's, AK, (SMA); the North River, AK, (JNR); the Norton Bay, AK, (OAY); the Hotham, AK, (HHM); and the Cape Lisburne, AK, (LUR) NDB's by providing new waypoints in those areas.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–367 in the vicinity of St. Mary's, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–364: The FAA proposes to establish T–367 from the JOPES, AK, WP located over the St. Mary's Airport (KSM), Alaska to the CABGI, AK, WP located over the Cape Lisburne LRRS Airport (LUR), Alaska.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would 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 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 6011 United States Area Navigation Routes.

* * * * *

T–367 JOPES, AK TO CABGI, AK [NEW]

JOPES, AK	WP	(Lat. 62°03′33.30″ N, long. 163°17′07.68″ W)
WOMEV, AK	WP	(Lat. 62°18′43.29″ N, long. 162°57′55.67″ W)
JERDN, AK	WP	(Lat. 63°44′57.33″ N, long. 160°44′31.91″ W)
HALUS, AK	WP	(Lat. 64°41′43.78″ N, long. 162°04′03.53″ W)
FEMEP, AK	WP	(Lat. 65°14′24.15″ N, long. 160°58′41.58″ W)
JIGUM, AK	WP	(Lat. 65°59′34.37″ N, long. 161°56′53.01″ W)
Kotzebue, AK (OTZ)	VOR/DME	(Lat. 66°53′08.46″ N, long. 162°32′23.77″ W)
CABGI, AK	WP	(Lat. 68°52′16.94″ N, long. 166°04′50.37″ W)

* * * * *

Issued in Washington, DC, on January 3, 2022.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2022–00004 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2021–N–1326]

Scientific Data and Information Related to the Residue of Carcinogenic Concern for the New Animal Drug Carbadox; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a public hearing on scientific data and information related to the residue of carcinogenic concern for the new animal drug carbadox, a carcinogenic new animal drug used in swine feed.

DATES: The public hearing will be held virtually on March 10, 2022, from 1 p.m. to 5 p.m., Eastern Time. Persons interested in attending this public hearing must register no later than 11:59 p.m. Eastern Time on March 9, 2022. Persons interested in making oral presentations and comments at the public hearing must submit requests by February 18, 2022. Submit either electronic or written comments on this hearing by April 11, 2022. See the **SUPPLEMENTARY INFORMATION** section for registration dates and information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 11, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 11, 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–2021–N–1326 for ''Scientific Data and Information Related to the Residue of Carcinogenic Concern for the New Animal Drug Carbadox; Public Hearing; Request for Comments.'' 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 our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Kelly Covington, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, *CarbadoxPublicHearing2022@fda.hhs.gov,* 240–402–5661.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of Hearing

Under the Delaney Clause (section 512(d)(1)(I) (21 U.S.C. 360b(d)(1)(I)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act)), FDA generally cannot approve a new animal drug application (NADA) if the drug that is the subject of that application induces cancer in humans or animals. An exception to this general rule is commonly known as the Diethylstilbestrol ''DES'' Proviso, which allows for the approval of a carcinogenic new animal drug where FDA finds that under the approved conditions of use: (1) The drug will not adversely affect the animals treated with the drug and (2) no residues of the drug will be found by an approved regulatory method in any edible tissues of, or in any foods yielded by, the animal (section 512(d)(1)(I) of the FD&C Act).

On July 20, 2020, the Agency published a notice in the **Federal Register** proposing an order to revoke the approved method for detecting residues of carbadox, a carcinogenic new animal drug used in swine feed. (85 FR 43853, July 20, 2020; Docket No. FDA–2020–N–0955, ''Phibro Animal Health Corp.; Carbadox in Medicated Swine Feed; Revocation of Approved Method.'') The currently approved method measures quinoxaline-2-carboxylic acid (QCA) as a marker residue to detect the presence of the residue of carcinogenic concern. (Determination of Carbadox (as Quinoxaline-2-Carboxylic [QCA]) Residues in Swine Liver and Muscle Tissues After Drug Withdrawal, *https://www.fda.gov/about-fda/center-veterinary-medicine/cvm-foia-electronic-reading-room.*) The proposal to revoke the approved method for carbadox is based on CVM's determination that the method is inadequate to monitor residue of carcinogenic concern in compliance with FDA's regulations in part 500, subpart E (21 CFR part 500, subpart E). These regulations set out the requirements for demonstrating that no residues of the drug will be found by an approved regulatory method in any edible tissues of or in any foods obtained from the animal, as required to meet the requirements of the DES Proviso. The purpose of the public hearing is to gather additional data and information related to the residue of carcinogenic concern for the new animal drug carbadox.

II. Notice of Hearing Under 21 CFR Part 15

This public hearing will be held in accordance with part 15 (21 CFR part 15). Pursuant to § 15.1(a) and authority delegated from the Commissioner of Food and Drugs as referenced in the FDA Staff Manual Guide 1410.21(1)(B)(6) and (1)(D), the FDA Acting Chief Scientist concludes, as a matter of discretion, that it is in the public interest to permit persons to present information and views at a public hearing on this matter. The hearing will be conducted by a presiding officer, who will be accompanied by other United States Government employees serving as a panel in conducting the hearing. Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. Only the presiding officer and panel members can pose questions; they can question any person during or at the conclusion of each presentation. To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

III. Topics for the Public Hearing

We encourage public comments and presentations at the public hearing. We are particularly interested in receiving comments, data, and information about the topics listed below. In submitting comments, data, and information to the docket, please identify available references for the data and information, as well as the specific item number listed below, if applicable. Please reference, but do not resubmit, any information already contained in Docket No. FDA–2020–N–0955, ''Phibro Animal Health Corp.; Carbadox in Medicated Swine Feed; Revocation of Approved Method.''

1. Data to inform our knowledge of the residue of carcinogenic concern not summarized in the Freedom of Information summary for the 1998 supplemental approvals, including additional data regarding the fraction of noncarcinogenic residues in the total radiolabeled residues of carbadox.

2. For any given concentration of a marker residue, the corresponding concentration of the residue of carcinogenic concern.

3. Additional information not already contained in Docket No. FDA–2020–N–0955, ''Phibro Animal Health Corp.; Carbadox in Medicated Swine Feed; Revocation of Approved Method'' related to the adequacy of the current approved method to measure QCA as a marker residue for the residue of carcinogenic concern for the new animal drug carbadox.

4. Any method, other than the current approved method, that demonstrates ''no residue'' for the new animal drug carbadox in conformance with part 500, Subpart E.

5. Detailed information on the conduct and quality of studies providing data to support the points above, including information on the extraction process and the stability of residues being analyzed.

IV. Participating in the Public Hearing

Registration: To register to attend the virtual public hearing, on ''Scientific Data and Information Related to the Residue of Carcinogenic Concern for the New Animal Drug Carbadox; Public Hearing; Request for Comments'' please register at *https://fda.zoomgov.com/j/1600135012?pwd=MFdjMW9FRXg4RGllc3FHWVhkWVAyZz09* by March 9, 2022. If you have any questions, you can contact *CarbadoxPublicHearing2022@fda.hhs.gov* (See **DATES** and **ADDRESSES**). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Request for Oral Presentations: During online registration, you may indicate if you wish to make a formal presentation (with accompanying slide deck) or present oral comments during the public hearing session (with no slide deck). If you decide you wish to make a presentation after registering online, you may submit a request to *CarbadoxPublicHearing2022@fda.hhs.gov.* All requests to make presentations must be received by February 18, 2022. FDA will do its best to accommodate requests to make public presentations. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations. FDA will determine the amount of time allotted to each presenter and the approximate time each presentation is to begin and will select and notify participants by February 23, 2022.

If selected for a formal oral presentation (with a slide deck), each presenter must submit an electronic copy of their presentation (PowerPoint or PDF) to *CarbadoxPublicHearing2022@fda.hhs.gov* with the subject line ''Scientific Data and Information Related to the Residue of Carcinogenic Concern for the New Animal Drug Carbadox; Public Hearing; Request for Comments'' on or before March 4, 2022. No commercial or promotional material will be permitted to be presented or distributed at the public hearing.

Persons notified that they will be presenters are encouraged to be online early. Actual presentation times may vary based on how the hearing progresses in real time. An agenda for the hearing and any other background materials will be made available no later than 5 days before the hearing at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/part-15-public-hearing-scientific-data-and-information-related-residue-carcinogenic-concern-new.*

Transcripts: Please be advised that as soon as a transcript of the public hearing is available, it will be accessible at *https://www.regulations.gov.* It may also be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the Agency's website at *https://www.fda.gov/animal-veterinary/workshops-conferences-meetings/part-15-public-hearing-scientific-data-and-information-related-residue-carcinogenic-concern-new.*

Dated: January 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–00475 Filed 1–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 559

RIN 3141–AA76

Facility License; Correction

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of December 1, 2021, regarding Facility Licenses. The document contained incorrect dates for submitting comments. This correction clarifies that comments are due January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, 202–632–7003.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 1, 2021, in FR Doc. 2021–25845, on page 68200, in the third column, change the **DATES** caption to read:

DATES: Written comments on this proposed rule must be received on or before January 31, 2022.

Dated: January 6, 2022.

Michael Hoenig,

General Counsel.

[FR Doc. 2022–00625 Filed 1–12–22; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0428; FRL–9374–01–R4]

Finding of Failure To Attain the 2010 Sulfur Dioxide Standard; Tennessee; Sullivan County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Sullivan County, Tennessee sulfur dioxide (SO_2) nonattainment area failed to attain the 2010 1-hour SO_2 primary National Ambient Air Quality Standard (NAAQS or standard) by the applicable attainment date of October 4, 2018, based upon a weight of evidence analysis of available quality-assured and certified SO_2 ambient air monitoring data and SO_2 emissions data from January 2015 through December 2017. If EPA finalizes this determination as proposed, the State of Tennessee will be required to submit revisions to the Tennessee State Implementation Plan (SIP) that, among other elements, provide for expeditious attainment of the 2010 SO_2 standard.

DATES: Comments must be received on or before February 14, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0428 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009 or via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

A. The 2010 SO_2 NAAQS

Under section 109 of the Clean Air Act (CAA or ''Act''), EPA has established primary and secondary NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards the attainment and maintenance of which EPA has determined, including a margin of safety, are requisite to protect the public health. The secondary NAAQS represent ambient air quality standards the attainment and maintenance of which EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

Under the CAA, EPA must establish a NAAQS for SO_2, which is primarily released to the atmosphere through the burning of fossil fuels by power plants and other industrial facilities. Short-term exposure to SO_2 can damage the human respiratory system and increase breathing difficulties. Small children and people with respiratory conditions, such as asthma, are more sensitive to the effects of SO_2. Sulfur oxides at high concentrations can also react with compounds to form small particulates that can penetrate deeply into the lungs and cause health problems.

EPA first established primary SO_2 standards in 1971 at 0.14 parts per million (ppm) over a 24-hour averaging period and 0.3 ppm over an annual averaging period.[1] In June 2010, EPA revised the primary NAAQS for SO_2 to provide increased protection of public health, providing for revocation of the 1971 primary annual and 24-hour SO_2 standards for most areas of the country following area designations under the new NAAQS.[2] The 2010 NAAQS is 75 parts per billion (ppb) (equivalent to 0.075 ppm) over a 1-hour averaging period.[3] A violation of the 2010 1-hour SO_2 NAAQS occurs when the annual 99th percentile of ambient daily maximum 1-hour average SO_2 concentrations, averaged over a 3-year period, exceeds 75 ppb.[4]

B. Designations, Classifications, and Attainment Dates for the 2010 SO2 NAAQS

Following promulgation of any new or revised NAAQS, EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On August 5, 2013, EPA finalized its first round (round 1) of designations for the 2010 primary SO_2 NAAQS.[5] Specifically, in the 2013 action, EPA designated 29 areas in 16 states as nonattainment for the 2010 SO_2 NAAQS, including a portion of Sullivan County (hereinafter referred to as ''the Sullivan County Area'' or Area) in Tennessee. The Sullivan County Area lies within a 3-kilometer (km) radius circle centered around the B–253 powerhouse at the Eastman Chemical Company facility in Kingsport, Tennessee (Eastman), which encompasses an SO_2 monitor operating at the time of designation (Air Quality System (AQS) Site ID: 47–163–0007).[6] EPA's round 1 designations for the 2010 SO_2 NAAQS, including the Sullivan County Area, became effective on October 4, 2013. Pursuant to CAA section 192(a), the attainment date for the Area was no later than October 4, 2018, which is five years after the effective date of the final action designating each round 1 area as nonattainment for the 2010 SO_2 NAAQS.

Under CAA section 179(c) of the CAA, within six months of the attainment date, the EPA is required to make a determination, based on the area's air quality as of the attainment date, whether an area attained by that date. If the EPA determines that an area failed to attain by the attainment date, EPA is required to publish that determination in the **Federal Register**. CAA section 179(c)(2). On June 25, 2021, EPA entered into a consent decree with the Center for Biological Diversity in the U.S. District Court for the Northern District of California.[7] The consent decree requires EPA to finalize, by January 31, 2022, or March 31, 2022, depending on the nonattainment area, a determination whether certain round 1 SO_2 nonattainment areas (including the Sullivan County Area) attained the 1-hour SO_2 standard by the October 4, 2018 attainment date. For the Sullivan County Area, the consent decree deadline is March 31, 2022.

II. Proposed Determination and Consequences

A. Applicable Statutory and Regulatory Provisions

Section 179(c)(1) of the CAA requires EPA to determine whether a nonattainment area attained an applicable standard by the applicable attainment date based on the area's air quality as of the applicable attainment date. A determination of whether an area's air quality meets applicable standards is generally based upon the most recent three years of complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) in a nonattainment area and entered into the EPA's Air Quality System (AQS) database.[8] Data from ambient air monitors operated by state and local agencies in compliance with EPA's monitoring requirements must be submitted to AQS.[9] Monitoring agencies annually certify that these data are accurate to the best of their knowledge.[10] EPA uses the certified air monitoring data to calculate design values that are used to determine the area's air quality status in accordance with 40 CFR part 50 Appendix T (for SO_2).

Specifically, under EPA regulations in 40 CFR 50.17 and in accordance with 40 CFR part 50 Appendix T, the 2010 1-hour annual SO_2 standard is met when the design value is less than or equal to 75 ppb. Design values are calculated by

[1] *See* 36 FR 8186 (April 30, 1971).

[2] 40 CFR 50.4(e).

[3] *See* 75 FR 35520 (June 22, 2010).

[4] 40 CFR 50.17.

[5] *See* 78 FR 47191 (August 5, 2013).

[6] For exact descriptions of the Sullivan County Area, refer to 40 CFR 81.343.

[7] *See* Center for Biological Diversity et al v. EPA; Case No. 3:20-cv-05436–EMC in the docket for this proposed action.

[8] AQS is EPA's repository of ambient air quality data.

[9] 40 CFR 58.16.

[10] 40 CFR 58.15.

computing the three-year average of the annual 99th percentile daily maximum 1-hour average concentrations.[11] When calculating 1-hour primary standard design values, the calculated design values are rounded to the nearest whole number (*i.e.,* 1 ppb) by convention. An SO_2 1-hour primary standard design value is valid if it encompasses three consecutive calendar years of complete data. A year is considered complete when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days are complete. A sampling day is considered complete if 75 percent of the hourly concentration values are reported; this includes data affected by exceptional events that have been approved for exclusion by the EPA Administrator.[12]

EPA notes that when determining the attainment status of SO_2 nonattainment areas, including when making determinations of attainment by the attainment date, in addition to ambient monitoring data, the Agency may also consider air quality dispersion modeling and/or a demonstration that the control strategy in the SIP has been fully implemented.[13] With regard to the use of monitoring data for such determinations, EPA's 2014 Nonattainment SO_2 Guidance [14] specifically notes that ''[i]f the EPA determines that the air quality monitors located in the affected area are located in the area of maximum concentration, the EPA may be able to use the data from these monitors to make the determination of attainment without the use of air quality modeling data.'' [15] The modeling analysis of whether monitors are located in the area of maximum concentration is necessary where EPA is making a determination that an area attained by its attainment date based solely on that monitoring information. In the case of the Sullivan County Area, the SLAMS monitors did not start collecting data until the middle of 2016; therefore, a valid 2015–2017 design value based on three consecutive calendar years cannot be calculated.[16] EPA's proposed determination that the area did not attain by its attainment date is, therefore, based on a technical analysis of the weight of available evidence — including monitoring data and emissions data from the relevant time period, as described in section II.C and II.D of this notice. As noted, the determination of whether the monitors are located in the area of maximum concentration is not needed in this situation, because a demonstration is not being made that the Area has attained the 2010 SO_2 NAAQS by the October 4, 2018, attainment date.

B. Monitoring Network Considerations

Section 110(a)(2)(B)(i) of the CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. EPA's monitoring requirements are specified by regulation in 40 CFR part 58. These requirements are applicable to the state, and where delegated, to local air monitoring agencies that operate criteria pollutant monitors. The regulations in 40 CFR part 58 establish specific requirements for operating air quality surveillance networks to measure ambient concentrations of SO_2, including requirements for measurement methods, network design, quality assurance procedures, and the minimum number of monitoring sites designated as SLAMS. In sections 4.4 and 4.5 of Appendix D to 40 CFR part 58, EPA specifies minimum SLAMS monitoring requirements for SO_2. SLAMS produce data that are eligible for comparison with the NAAQS, and therefore, the monitor must be an approved federal reference method (FRM), federal equivalent method (FEM), or approved regional method (ARM) monitor. Appendix A to 40 CFR part 58 specifies quality assurance requirements for SLAMS monitors. The minimum number of required SO_2 SLAMS is described in sections 4.4.2 and 4.4.3 of Appendix D to 40 CFR part 58. According to section 4.4.2, the minimum number of required SO_2 monitoring sites is determined by the population weighted emissions index for each state's core based statistical area. Section 4.4.3 describes additional monitors that may be required by an EPA regional administrator.

Under 40 CFR 58.10, states are required to submit annual monitoring network plans (AMNP) for ambient air monitoring networks for approval by EPA. Each AMNP discusses the status of the air monitoring network as required under 40 CFR 58.10 and addresses the operation and maintenance of the air monitoring network, including any proposed modifications to the network. EPA reviews these AMNPs for compliance with the applicable monitoring network design requirements in 40 CFR part 58.[17] EPA also conducts regular technical systems audits (TSAs) during which EPA reviews and inspects ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of ambient air quality data.[18]

For the Sullivan County Area, the Tennessee Department of Environment and Conservation (TDEC) is responsible for assuring that the Area meets air quality monitoring requirements. TDEC submitted an annual monitoring network plan to EPA that describes the various monitoring sites operated by TDEC.[19] EPA approved TDEC's most recent AMNP on September 30, 2021, and concluded that the air agency's ambient air monitoring network meets or exceeds the requirements for the minimum number of SLAMS for all criteria pollutants, including SO_2, in the Sullivan County Area.[20] For additional information related to Sullivan County Area's SO_2 monitoring network, including EPA's TSAs and the State's response and air monitoring data, please refer to EPA's technical support document (TSD) located in the docket for this proposed action (Sullivan County TSD).[21]

C. Sullivan County SO_2 Monitoring Network

During the round 1 SO_2 designations in 2013, Eastman operated an industrial

[11] As defined in 40 CFR part 50, Appendix T, section 1(c), daily maximum 1-hour values refer to the maximum 1-hour SO_2 concentration values measured from midnight to midnight that are used in the NAAQS computations.

[12] *See* 40 CFR part 50, Appendix T, sections 1(c), 3(b), 4(c), and 5(a).

[13] For the Sullivan County Area, EPA has not yet approved an attainment demonstration with accompanying emission limits into the SIP. Thus, EPA cannot analyze compliance with an approved SIP control strategy.

[14] EPA, Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions (April 2014) (''2014 SO_2 Guidance''), p.49, available at: *https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

[15] Id., p.50.

[16] The current SO_2 monitoring network in the Area, which is comprised of four SLAMS monitors and represented in Tennessee's ambient air monitoring network plan, is designed to measure SO_2 air quality in the areas of expected maximum 1-hour SO_2 concentration.

[17] *See, e.g.,* letter dated September 14, 2020, from Caroline Y. Freeman, Director, Air and Radiation Division, EPA Region IV, to Michelle Owenby, Director, Division of Air Pollution Control, TDEC. Copies of EPA letters responding to Tennessee's AMNPs for 2016–2020 are included in the docket for this proposed action.

[18] *See* 40 CFR part 58, appendix A, section 2.5.

[19] *See, e.g.,* Tennessee's current AMNP ''2021 Tennessee Annual Monitoring Network Plan.'' EPA Region 4 approved the 2021 AMNP on September 30, 2021. Copies of Tennessee's AMNPs for 2015–2021 are included in the docket for this proposed action.

[20] *See* letter dated September 30, 2021, from Caroline Y. Freeman, Director, Air and Radiation Division, EPA Region IV, to Michelle Owenby, Director, Division of Air Pollution Control, TDEC in the docket for this proposed action.

[21] *See* Technical Support Document Finding of Failure to Attain the 2010 1-Hour SO_2 NAAQS For the Sullivan County, Tennessee Nonattainment Area in the docket for this proposed action.

SO_2 monitor near the facility at the Ross N. Robinson site (AQS ID: 47–163–0007). From 2010 to 2012, Tennessee certified to EPA that all industry-operated monitoring data in Tennessee, including the Eastman SO_2 monitor, met EPA regulatory requirements, including quality assurance requirements. EPA used this data as the basis for an SO_2 nonattainment determination on August 13, 2013, based on a 2009–2011 design value of 196 ppb at the Ross N. Robinson industrial monitor.

In September 2013 (and subsequently in 2016), after an EPA TSA, EPA found that Tennessee was unable to provide the required quality assurance records and documentation for the industry-operated air monitoring sites in Sullivan County. EPA determined that the Eastman industrial monitors were not meeting the quality assurance requirements in 40 CFR part 58 Appendix A and therefore not comparable to the NAAQS. As a result of EPA's TSA findings, TDEC assigned a NAAQS exclusion flag to the Ross N. Robinson industrial monitor's data in AQS beginning in September 2013 to indicate the data did not meet regulatory requirements. For the 2015–2017 period, no valid SO_2 monitoring data were collected in the Area from January 1, 2015, to July 20, 2016. Consequently, the Area did not have a valid SO_2 design value for the 2015–2017 period. *See* Sullivan County TSD for more details on EPA's TSAs.

To characterize SO_2 concentrations in the Sullivan County Area, Tennessee began operating a SLAMS SO_2 monitor (AQS ID: 47–163–6001) on July 21, 2016, adjacent to the Ross N. Robinson industrial monitoring site under an EPA-approved quality assurance project plan, and in accordance with EPA's regulatory requirements at Appendix D to 40 CFR part 58. The Ross N. Robinson SLAMS site is located adjacent to Eastman's industrial monitor of the same name on Wilburn Drive in Kingsport. On September 1, 2016, TDEC also installed a second monitor (AQS ID: 47–163–6002) at the Skyland Drive industrial monitoring site to further characterize high elevation SO_2 concentrations in the complex terrain around the Sullivan County Area. This monitor was sited in accordance with the normalized air modeling conducted by Tennessee in accordance with 40 CFR part 58 and EPA's SO_2 Monitoring Technical Assistance Document (TAD).[22] The Skyland Drive SLAMS monitor site is located with Eastman's industrial SO_2 monitor of the same name on Skyland Drive at Bagwell St. in Kingsport. The primary monitors [23] at each of these sites are FEM monitors. Valid hourly SO_2 data for the Area became available for the remainder of the design value period (*i.e.,* from July 21, 2016, to December 31, 2017) once the Ross N. Robinson SLAMS site started operating. These monitoring data have been reported to AQS and certified by TDEC. Eastman stopped reporting data to AQS in 2016 for their industrial monitors and ceased operating these monitors in 2019. During the 2015–2017 design value period, the TDEC SLAMS monitors did not collect data in 2015 or the first half of 2016. Therefore, a valid 2015–2017 design value cannot be calculated for the nonattainment area.

In 2017, Tennessee committed to expanding its existing SO_2 ambient air monitoring network within the nonattainment area.[24] In 2018, EPA approved the portion of TDEC's AMNP that added two SLAMS monitors within the Sullivan County Area to characterize the expected areas of maximum 1-hour SO_2 concentrations near the Eastman facility.[25] TDEC subsequently began operating the two additional SLAMS sites at Happy Hill (AQS ID: 47–163–6004) in October 2018 and Andrew Johnson Elementary School (AQS ID: 47–163–6003) in January 2019 to characterize the areas of expected maximum 1-hour SO_2 concentrations around the facility. These monitors were sited in accordance with the normalized air modeling conducted by Tennessee in accordance with 40 CFR part 58 and EPA's SO_2 TAD. EPA approved the SO_2 portion of TDEC's AMNP in 2016, 2018, 2019, and 2020.[26]

D. SO_2 Data Considerations and Proposed Determination

As discussed in section II.C above, air monitoring data in the area from January 1, 2015, to July 20, 2016, did not meet the quality assurance requirements in 40 CFR part 58 Appendix A and therefore are not comparable to the NAAQS. Therefore, a valid 2015–2017 design value could not be determined for the nonattainment area. In lieu of a 2015–2017, 3-year design value, EPA has developed a weight of evidence assessment based on available air quality monitoring data and source-specific SO_2 emissions in the Area from January 2015 through December 2017 to support the determination that the Sullivan County Area did not attain the 1-hour SO_2 standard by the October 4, 2018, attainment date based on the area's air quality as of the attainment date. This section summarizes EPA's weight of evidence approach and data considerations for the nonattainment area. More detailed discussions on the air monitoring and SO_2 emission data are provided in EPA's Sullivan County TSD located in the docket for this proposed action.

1. Sullivan County SO_2 Monitoring Data

As discussed in section I.B above, the applicable attainment date for the Sullivan County Area, is October 4, 2018. In accordance with Appendix T to 40 CFR part 50, determinations of SO_2 NAAQS compliance are based on three consecutive calendar years of data. To determine the air quality as of the attainment date in the nonattainment area, EPA reviewed the available data collected during the three calendar years immediately preceding the attainment date for the Sullivan County Area (*i.e.,* January 1, 2015, through December 31, 2017), as well as SO_2 emissions data at Eastman.

As discussed above, no NAAQS-comparable SO_2 monitoring data is available for the Area for January 1, 2015, to July 20, 2016. The available SLAMS SO_2 data for the Sullivan County Area from July 21, 2016, through December 31, 2017, have been certified by TDEC. EPA has also evaluated the completeness of these data in accordance with the requirements of 40 CFR part 50, Appendix T. The data collected by TDEC in the three calendar years preceding the attainment date meet the quarterly completeness criteria

[22] *See* SO_2 NAAQS Designations Source-Oriented Monitoring Technical Assistance Document (TADs), Draft February 2016 in the docket for this proposed action.

[23] A primary monitor is a term defined in 40 CFR part 58 that means the monitor identified by the monitoring organization that provides concentration data used for comparison to the NAAQS. For any specific site, only one monitor for each pollutant can be designated in AQS as primary monitor for a given period of time. The primary monitor identifies the default data source for creating a combined site record for purposes of NAAQS comparisons.

[24] In 2017, EPA commented on TDEC's SO_2 draft attainment SIP for the Sullivan County Area and recommended that the State expand the monitoring network within the nonattainment area to verify that the SO_2 emission reduction measures proposed in the attainment SIP at the time would ensure attainment of the 1-hour standard. *See* EPA 2017 comment letter found in the docket for this proposed action. Tennessee submitted an attainment SIP for the Sullivan County Area on May 11, 2017. EPA proposed approval of the attainment SIP on June 29, 2018 (83 FR 30609) but has not finalized approval as of this action.

[25] *See* letter dated July 24, 2018, from Beverly Banister, Director, Air, Pesticides and Toxic Management Division, EPA Region IV, to Michelle Owenby, Director, Division of Air Pollution Control, TDEC included in the docket for this proposed action.

[26] The most recent TDEC AMNP, submitted and approved in 2020, includes four SO_2 SLAMS in the nonattainment area which will provide NAAQS-comparable monitoring data moving forward.

for only 6 out of 12 quarters at the Ross N. Robinson SO_2 monitor since the monitor began operation on July 21, 2016, and 5 out of 12 quarters at the Skyland Drive SO_2 monitor since the monitor began operation on September 1, 2016. The available annual 99th percentile daily maximum 1-hour average SO_2 data at each monitoring site within the Sullivan County Area for the 2015–2017 period are presented in Table 1.

TABLE 1—2015–2017 SO_2 MONITORING DATA FOR THE SULLIVAN COUNTY AREA

Site (AQS ID)	Annual 99th percentile daily maximum 1-hour average (ppb)			Design value valid?
	2015	2016	2017	
Ross N. Robinson (47–163–6001)	[a] N/A	[b] 152	92	No.
Skyland Dr. (47–163–6002)	[a] N/A	[b] 91	78	No.

Notes:
[a] The SLAMS monitors did not collect data in 2015.
[b] The Ross N. Robinson monitor had only two quarters of complete data in 2016 due to the monitor beginning operation on July 21, 2016. The Skyland Drive monitor had only one quarter of complete data in 2016 due to the monitor beginning operation on September 1, 2016.
Source: EPA AQS Design Value Report, retrieved September 14, 2021.

The data in Table 1 indicates that although the two sites in the Sullivan County Area did not have complete data in 2015 and 2016 to determine a 3-year design value, both monitors consistently measured 99th percentile daily maximum 1-hour SO_2 concentrations above the 75 ppb level of the 1-hour NAAQS in 2016 and 2017, after beginning operation in mid-2016. Both monitors have complete 2017 datasets.

For an area to attain the 2010 SO_2 NAAQS by the October 4, 2018, attainment date, the design value based upon monitored air quality data from 2015–2017 at each eligible monitoring sites must be equal to or less than 75 ppb for the 1-hour standard. Table 1 above shows that the annual 99th percentile daily maximum 1-hour average at each monitoring site exceeds 75 ppb in 2016 and 2017. *See also* Table 1 in the Sullivan County TSD.

2. Eastman SO_2 Emissions Data

As mentioned above, in round 1 SO_2 designations, EPA designated as nonattainment the portion of Sullivan County within a 3-km radius circle centered at Eastman's B–253 powerhouse, which at the time of designations encompassed the one monitor that was violating the 2010 1-hour SO_2 NAAQS based on 2009–2011 air quality data. Table 2 shows that the SO_2 emissions, expressed in tons per year (tpy), from Eastman account for more than 99 percent of the total SO_2 emissions in Sullivan County during the 2015–2017 period relevant for this proposed determination that the Area failed to attain the SO_2 NAAQS by the applicable attainment date. Prior to the Sullivan County Area being designated as nonattainment for the 2010 1-hour SO_2 NAAQS in 2013, Eastman operated 15 coal-fired boilers at their facility to generate steam and electricity. As discussed in more detail in the Sullivan County TSD for this proposed action, Eastman's annual SO_2 emissions have been steadily decreasing since 2013 due primarily to the changes in operations of the coal-fired boilers.

TABLE 2—2015–2017 SO_2 EMISSION DATA FOR THE SULLIVAN COUNTY SO_2 NONATTAINMENT AREA

Calendar year	Total Sullivan County SO_2 emissions from all sources (tpy)	Eastman SO_2 emissions (tpy)
2015	17,980	17,978
2016	14,325	14,324
2017	10,792	10,746

As shown in Table 2, the total annual SO_2 emissions from Eastman decreased over 7,000 tpy from 17,978 tpy in 2015 to 10,746 tpy in 2017. During 2015–2017, the annual emissions were highest in 2015, when no air monitoring data is available, and emissions decreased significantly in 2016 and 2017. The decrease was primarily because of the conversion of two large coal-fired boilers, Boilers 27 and 28 in the B–253 powerhouse, from burning coal to natural gas fuel that was completed in 2016. These two boiler conversions were part of a larger SO_2 emissions control project beginning in 2014 and ending in 2018, which converted all five boilers in the B–253 powerhouse from burning coal to burn natural gas fuel. These conversions had a significant impact on SO_2 emissions: Emissions from the B–253 powerhouse decreased from 14,171 tpy in 2012 to less than 10 tpy in 2019.[27] The total annual SO_2 emissions from the entire Eastman facility decreased from 21,246 tpy in 2012 to 4,510 tpy in 2019. *See* Sullivan County TSD for complete details of the boiler conversions and resulting emissions changes.

It is important to also consider trends in hourly SO_2 emissions since the 2010 SO_2 NAAQS is a short-term standard that is evaluated using hourly measurements of ambient SO_2 concentrations. EPA's evaluation of Eastman's hourly emissions data found that their emissions were over 33 percent higher during the period from January 1, 2015, to June 30, 2016, (when no valid ambient monitoring data was available), than the July 1, 2016, through December 31, 2017, period (when valid

[27] The conversion of the B–253 boilers from burning coal to natural gas was completed in October 2018. Thus, the SO_2 emissions from the B–253 powerhouse dropped significantly to 10 tpy in 2019.

ambient monitoring data show exceedances of the NAAQS).[28]

3. Weight of Evidence Analysis Conclusions and Proposed Determination

To determine the air quality in the Sullivan County Area as of the applicable attainment date, EPA reviewed the available ambient monitoring data and annual and hourly SO_2 emissions data at Eastman from January 1, 2015, to December 31, 2017. As shown in Table 1, the available SO_2 ambient monitoring data in the Sullivan County Area indicates that the 99th percentile maximum daily 1-hour SO_2 concentration in both 2016 and 2017 exceeded the 1-hour SO_2 NAAQS level of 75 ppb. The primary SO_2 emissions sources in the nonattainment area are the coal-fired boilers at Eastman. Both the annual SO_2 emissions and the hourly SO_2 emissions from the Eastman boilers were significantly higher from January 1, 2015, to June 30, 2016, when air monitoring data are not available, than from July 1, 2016, through December 31, 2017, when air monitoring data are available. Ambient SO_2 concentrations are very source-oriented, and in this case, the Eastman boilers make up virtually the entire emissions inventory for the Area. Considering that the ambient measured concentrations exceeded the level of the NAAQS in 2016 and 2017, when emissions from the primary source of SO_2 were *lower* than they were in 2015, EPA believes it is reasonable to expect that the 99th percentile maximum daily 1-hour SO_2 concentration in 2015 likely also exceeded the level of 75 ppb. Consequently, the three-year average of: The 99th percentile value for 2015 (likely exceeded the level of the NAAQS), 2016 (exceeded the level of the NAAQS), and 2017 (exceeded the level of the NAAQS) almost certainly would have resulted in a design value that violated the NAAQS. EPA therefore proposes to find that this analysis of available ambient concentration data and SO_2 emissions data demonstrates by a weight of evidence that the Sullivan County Area failed to attain the 1-hour SO_2 NAAQS by the required attainment date of October 4, 2018.

E. Consequences for SO_2 Nonattainment Areas Failing To Attain Standards by Attainment Dates

The consequences for SO_2 nonattainment areas for failing to attain the standard by the applicable attainment date are set forth in CAA section 179(d). Under section 179(d), a state must submit a SIP revision for the area meeting the requirements of CAA sections 110 and 172, the latter of which requires, among other elements, a demonstration of attainment and reasonable further progress, and contingency measures. In addition, under CAA section 179(d)(2), the SIP revision must include such additional measures as EPA may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts.

In this case, the dominant source of SO_2 emissions in the Sullivan County Area is the Eastman facility. EPA expects that information concerning potential additional control measures would be collected by TDEC as part of its development of the SIP revision to address the requirements that would be triggered by a final finding of failure to attain for the Area. The State is required to submit the SIP revision within one year after EPA publishes a final action in the **Federal Register** determining that the nonattainment area failed to attain the applicable SO_2 standard by the applicable attainment date. In addition to triggering requirements for a new SIP submittal, a final determination that a nonattainment area failed to attain the NAAQS by the applicable attainment date would trigger the implementation of contingency measures adopted into the SIP under 172(c)(9).

Under CAA sections 179(d)(3) and 172(a)(2), the new attainment date for each nonattainment area is the date by which attainment can be achieved as expeditiously as practicable, but no later than five years after EPA publishes a final action in the **Federal Register** determining that the nonattainment area failed to attain the applicable SO_2 standard by the applicable attainment date.[29]

III. Proposed Action and Request for Public Comment

Under CAA section 179(c)(1), EPA proposes to determine that the Sullivan County Area failed to attain the 2010 1-hour SO_2 standard by the applicable attainment date of October 4, 2018. This determination is based upon a weight of evidence analysis of available quality assured and certified SO_2 monitored air quality data and emissions data from January 2015 through December 2017 in lieu of a valid 2015–2017 design value. If finalized as proposed, the State of Tennessee would be required under CAA section 179(d) to submit a revision to the SIP for the Sullivan County Area. The required SIP revision for the area must, among other elements, demonstrate expeditious attainment of the standards within the period prescribed by CAA section 179(d). If finalized as proposed, the SIP revision required under CAA section 179(d) would be due for submittal to EPA no later than one year after the publication date of the final action.

EPA is soliciting public comments on the issues discussed in this notice.[30] The Agency will accept comments from the public on this proposal for the next 30 days. The deadline and instruction on how to submit comment can be found in the **DATES** and **ADDRESSES** sections of this notice. EPA will consider these comments before taking final action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed action, if finalized, would require the state to adopt and submit a SIP revision to satisfy CAA requirements and would

[28] See Figure 5 and Table 3 of the Sullivan County TSD in the docket for this proposed action.

[29] Pursuant to CAA sections 172(a)(2)(D) and 192(a), the attainment date extension provision under section 172(a)(2)(A) does not apply to the SO_2 NAAQS.

[30] The scope of this proposed action is limited to whether the Sullivan County Area attained the 1-hour SO_2 standard by the applicable October 4, 2018, attainment date. Therefore, EPA is not soliciting further comment on the approvability of the State's 2017 SO_2 attainment SIP that the Agency previously proposed to approve on June 29, 2018. *See* 83 FR 30609. The comment period for that proposal closed on July 30, 2018. EPA has not yet taken final action on that SIP submission.

not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more, as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action proposes to determine that the Sullivan County Area failed to attain the NAAQS by the applicable attainment date. If finalized, this determination would trigger existing statutory timeframes for the State to submit SIP revisions. Such a determination in and of itself does not impose any federal intergovernmental mandate.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. The proposed finding of failure to attain SO_2 NAAQS does not apply to tribal areas, and the proposed rule would not impose a burden on Indian reservation lands or other areas where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, this proposed 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.

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

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. This proposed action is not subject to Executive Order 13045 because the effect of this proposed action, if finalized, would be to trigger additional planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The effect of this proposed action, if finalized, would be to trigger additional planning requirements under the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Pollution, Sulfur dioxide.

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

Dated: December 29, 2021.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–00028 Filed 1–12–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0446; FRL–9398–01–R4]

Air Plan Approval; KY; Jefferson County Emissions Statements Requirements for the 2015 8-Hour Ozone Standard Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ) to EPA on August 12, 2020. The proposed revision was submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) to address the emissions statement requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) for the Jefferson County portion of the Louisville, Kentucky 2015 8-hour ozone nonattainment area (hereinafter referred to as ''Jefferson County''). Jefferson County is part of the Kentucky portion of the Louisville, Kentucky-Indiana 2015 8-hour ozone nonattainment area (hereinafter referred to as ''the Louisville, KY Area'') which is comprised of Bullitt, Jefferson, and Oldham Counties in Kentucky. EPA will consider the emissions statement requirements for the Bullitt and Oldham County portions of the Louisville, KY Area in a separate action. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before February 14, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0446 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2015, EPA promulgated revised 8-hour primary and secondary ozone NAAQS, strengthening both from 0.075 parts per million (ppm) to 0.070 ppm (the 2015 8-hour ozone NAAQS). *See* 80 FR 65292. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years. Under EPA's regulations at 40 CFR part 50, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm. *See* 40 CFR 50.19. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percentage of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined using Appendix U of part 50.

Upon promulgation of a new or revised ozone NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. On April 30, 2018 (effective August 3, 2018), EPA designated a 5-county area in the Louisville metropolitan area, including Jefferson County, as a marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS using 2014–2016 ambient air quality data.[1] *See* 83 FR 25776 (June 4, 2018). On December 6, 2018, EPA finalized a rule titled ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS.[2] *See* 83 FR 62998 (December 6, 2018); 40 CFR part 51, subpart CC. This rule establishes nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA, including an attainment date of August 3, 2021, three years after the August 3, 2018, designation effective date, for areas classified as marginal for the 2015 8-hour ozone NAAQS.

Ground level ozone is not emitted directly into the air but is created by chemical reactions between oxides of nitrogen (NO_X) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOC. Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit a SIP revision requiring annual emissions statements to be submitted to the state by the owner or operator of each NO_X and VOC stationary source. However, a state may waive the emissions statement requirement for any class or category of stationary sources which emit less than 25 tons per year (tpy) of VOC or NO_X if the state provides an inventory of emissions as required by CAA section 182 that accounts for emissions from those sources. *See* CAA section 182(a)(3)(B)(ii). The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

Based on the nonattainment designation, Kentucky was required to develop a SIP revision satisfying, among other things, CAA section 182(a)(3)(B). On August 12, 2020,[3] LMAPCD submitted a SIP revision addressing the emissions statement requirements related to the 2015 8-hour ozone NAAQS for Jefferson County. EPA is proposing to approve the August 12, 2020, SIP submittal as meeting the requirements of section 182(a)(3)(B) of the CAA and associated federal regulations. EPA's analysis of the SIP revision and how it addresses the emissions statement requirements is discussed in the next section of this notice.

II. Analysis of the Commonwealth's Submittal

As discussed above, section 182(a)(3)(B) of the CAA requires states to submit a SIP revision requiring the owner or operator of each NO_X and VOC stationary source located in an ozone nonattainment area to submit to the state annual emissions statements. The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

The August 12, 2020, SIP submission[4] contains a version of Regulation 1.06 adopted by LMAPCD on May 20, 2020 (referred to as ''Version 10'' by LMAPCD). The SIP revision requests that EPA incorporate Version 10 of Regulation 1.06 into the SIP, with the exception of Section 5 and references to Section 5,[5] to replace Version 9. Excluding changes to Section 5 and references to Section 5 of Regulation 1.06, Version 10 revises Version 9 by making typographical changes to the title and the ''Necessity and Function'' section of Regulation 1.06; changing of the title of Section 3 to ''Requirements for Emissions Statements''; renumbering a portion of subsection 3.2.7 to subsection 3.3 and changing the newly renumbered subsection 3.3 by replacing references to Sections 4 and 5 with ''in emissions statements''; renumbering subsection 3.3 to subsection 3.4 and adding ''The District may require such additional information be submitted as necessary.''; renumbering subsection 3.4 to subsection 3.5 and revising the new subsection 3.5 to add that data required by Section 6 shall also be submitted on LMAPCD approved forms in addition to data required by Section 4; renumbering 3.5 to subsection 3.6; revising subsection 4.3 by changing a reference to Section 6 to Section 7 due to a renumbering of those sections later in the regulation; insertion of a new Section 6 titled, ''Emissions Statements for Ozone Precursors,'' including the addition of subsection 6.1 to read: ''On or before April 15 of each year, all stationary sources of oxides of nitrogen or volatile organic compounds shall submit to the District a statement of actual emissions of those compounds.''; the addition of subsection 6.2 to read: ''Exemptions from this section:''; the addition of subsection 6.2.1 to read: ''Facilities with less than 25 tons per year of plant-wide actual volatile organic compounds or oxides of nitrogen emissions are exempted from

[1] The Louisville, KY–IN nonattainment area for the 2015 8-hour ozone standard consists of the following counties: Bullitt County, Jefferson County and Oldham County in Kentucky and Clark County and Floyd County in Indiana.

[2] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress, reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and compliance with emission control measures in the SIP.

[3] LMAPCD's transmittal letter for the August 12, 2020, SIP revision was dated August 11, 2020, and submitted to EPA on August 12, 2020.

[4] In the SIP revision, Kentucky states that Version 10 of Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,* satisfies the requirements of CAA section 182(a)(3)(B) for Jefferson County.

[5] EPA incorporated all of Version 9, except for Section 5—*Emissions Statements for Toxic Air Contaminants* and any reference to Section 5 located in Section 3, into the SIP on August 28, 2017. *See* 82 FR 40701.

this requirement, unless emissions of the other are at or above 25 tons per year.[6] The District may require sources claiming this exemption to provide adequate information to verify actual emissions for the previous year.''; the addition of 6.2.2 to read: ''The District may waive this requirement for sources located in an area designated as attainment or maintenance by U.S. EPA for all National Ambient Air Quality Standards (NAAQS) for ozone.''; the addition of subsection 6.3 to read: ''The emission statements submitted by the source to the District shall contain (at a minimum) all information required by Section 3 of this Regulation. The Emissions Statement submitted under Section 4 may be used to satisfy the requirements of this section.''; renumbering the former Section 6 to Section 7; and changing the new Section 7 to state that the required formal certification by a responsible official is defined in Regulation 1.02 instead of 2.16. As requested by LMAPCD, EPA is not acting on Section 5 or on the references to Section 5.

EPA has preliminarily determined that the changes to Regulation 1.06 in the August 12, 2020, SIP revision are consistent with the CAA. Aside from the addition of Section 6, the changes correct typographical errors, clarify the rule, and expand the scope of the rule. The addition of Section 6 modifies the emissions threshold for sources to submit annual emissions statements for ozone precursors to LMAPCD and is approvable for the reasons discussed below.

As allowed by CAA section 182(a)(3)(B)(ii), LMAPCD waived the emissions statement requirements for stationary sources emitting less than 25 tpy of NO_X or VOC. CAA section 182(a)(3)(B)(ii) allows a state to waive the application of emissions statements requirements to any class or category of stationary sources which emit less than 25 tons per year of VOC or NO_X if the state, in its submissions under section 182(a)(1) or 182(a)(3)(A),[7] provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

Pursuant to CAA section 182(a)(3)(A), Kentucky is required to submit a revised inventory meeting the requirements of section 182(a)(1) at the end of each 3-year period after submission of the inventory under section 182(a)(1) until the Louisville, KY Area is redesignated to attainment. CAA section 182(a)(1) requires the submission of a comprehensive, accurate, current inventory of actual emissions from all sources, as described in CAA section 172(c)(3), in accordance with guidance provided by EPA.[8] To comply with CAA section 182(a)(3)(A)'s requirement to submit periodic emissions inventories, LMAPCD submits NO_X and VOC emissions data to EPA's National Emissions Inventory (NEI)[9] consistent with 83 FR 62998, ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,'' and 40 CFR 51.1315. That emissions data includes small stationary sources (namely, those emitting less than 25 tpy of NO_X or VOC) in accordance with CAA section 182(a)(3)(B)(ii).

For the reasons discussed above, EPA has preliminarily determined that Jefferson County's emissions statement regulation meets the requirements of the CAA, including section 182(a)(3)(B) and the SIP Requirements Rule for the 2015 8-hour ozone NAAQS for the Jefferson County portion of the Louisville, Kentucky-Indiana Area.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Louisville Metro Air Pollution Control District Regulation 1.06—*Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,* Version 10, District effective on May 20, 2020, with the exception of Section 5 and any references to Section 5. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at EPA Region 4 office (please contact the person identified in the For **FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Kentucky's August 12, 2020, SIP revision as discussed in Section II, above. If this proposal is finalized, the text of Jefferson County Regulation 1.06 in the SIP will reflect the version of the rule effective on May 20, 2020 (Version 10) with the exception of Section 5 and any references to Section 5. EPA proposes to find that the Commonwealth's submission meets the requirements of sections 110 and 182 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

[6] On page 28 of the August 12, 2020 KDAQ submittal, Kentucky clarifies the meaning of section 6.2.1 by stating ''Combined emissions exceeding 25 tpy do not prevent a source from being exempt, so long as actual emissions of neither pollutant when taken alone exceeds 25 tpy''.

[7] CAA section 182(a)(3)(A) contains a triennial emissions inventory requirement.

[8] CAA section 172(c)(3) states, ''Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.''

[9] To access EPA's NEI, please visit: U.S. EPA, *National Emissions Inventory (NEI), https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei.*

• 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 29, 2021.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–00027 Filed 1–12–22; 8:45 am]

BILLING CODE 6560–50–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412–AA98

U.S. Agency for International Development Acquisition Regulation (AIDAR): Revised and Expanded Fringe Benefits for U.S. Personal Services Contracts With Individuals

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) seeks public comment on a proposed rule to revise AIDAR in order to expand fringe benefits for personal services contracts with individuals who are U.S. nationals (USPSCs). Specifically, this rulemaking will provide a paid parental leave benefit comparable to what is available to USAID's U.S. direct-hire employees and provide a relocation expense reimbursement similar to the benefit provided to USAID's direct-hire Foreign Service Officer (FSO) employees.

DATES: Comments must be received no later than March 14, 2022.

ADDRESSES: Address all comments concerning this proposed rule, identified by title of the action and Regulatory Information Number (RIN), through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Richard E. Spencer, Procurement Analyst, by phone at 202–916–2629 or via email at *policymailbox@usaid.gov* for clarification of content or information pertaining to status or publication schedules. Communications regarding this rule must cite the rule title and its Regulatory Information Number (RIN).

SUPPLEMENTARY INFORMATION:

I. Submission Instructions

Comments on this proposed rule must be in writing and submitted by the method specified in the **ADDRESSES** section above. Comment submissions must include the title and RIN of this proposed rule. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

All comments will be made available for public review at *https://www.regulations.gov* without changes, including the identifying information of the commenter, if provided. We recommend that commenters do not submit information that is considered confidential business information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID will only address substantive comments on the rule that are relevant and within the scope of the proposed rule.

II. Background

USAID relies heavily on the USPSC mechanism to advance its foreign assistance mission and mandate. Approximately ten percent of USAID's total workforce is USPSCs, of which about half perform under contracts where the place of performance is a USAID cooperating country abroad. The PSC Association, an Agency employee resource group representing USAID USPSCs, raised concerns to USAID's leadership about the equity of fringe benefits between U.S. direct-hire employees (USDH) and USPSCs. As a result, USAID has determined, as a matter of policy, to revise the AIDAR to provide the following changes as part of the Agency's standard USPSC fringe benefits package.

A. Paid Parental Leave

On December 20, 2019, the President signed the National Defense Authorization Act (NDAA) for Fiscal Year 2020, which includes the provisions of the new Federal Employee Paid Leave Act (FEPLA), making paid parental leave available to certain categories of Federal civilian employees. (Pub. L. 116–92.) FEPLA amended the Family and Medical Leave Act (FMLA) provisions in Title 5, United States Code (U.S.C.) to provide up to 12 weeks of paid parental leave to covered Federal employees in connection with the birth or placement (for adoption or foster care) of a child occurring on or after October 1, 2020. Paid parental leave granted in connection with a qualifying birth or placement under FEPLA is substituted for unpaid FMLA leave and is available during the 12-month period following the birth or placement. This particular benefit does not apply to contractors, including personal service contractors, of Federal agencies.

The Department of State (DoS) recently revised its policies in the Foreign Affairs Manual (3 FAM 9116) to authorize, as a matter of policy, paid parental leave for its USPSCs based on Title 1 of the Family Medical Leave Act (28 U.S.C. 2601). In USAID's meetings with the PSC Association earlier this year, Agency leadership indicated its intention to pursue several improvements to benefits for USPSCs, including paid parental leave.

On October 1, 2021, the USAID Administrator approved, as a matter of Agency policy, the provision of a similar paid parental leave benefit for USAID USPSCs to serve as an indicator of the Agency's commitment to equity for USPSCs. Eligible USPSCs may be granted up to 12 workweeks (using the term ''workweek'' as described in appendix D, section 12, clause 4) of paid parental leave in connection with the birth of a child, or a new placement of a child for adoption or foster care, for which the USPSC assumes a parental role. USAID's paid parental leave benefit for its USPSCs is based on (1) the paid parental leave benefit provided to certain categories of Federal civilian employees under the FEPLA, and (2) the paid parental leave benefit policy that the Department of State (DoS) recently approved for its American personal service contractors.

B. Relocation Expense Benefit

In its discussions with the Agency, the PSC Association raised a concern that ''USPSCs are not eligible for the Foreign-Transfer Allowance (FTA) and Home-Service Transfer Allowances (HSTA) and yet incur the same costs as Foreign Service Officers (FSOs) when moving from one post of assignment to another.'' The PSC Association

requested that the Agency ''[allow] these costs to be included in the Travel Authorizations of USPSCs [who are] moving between posts (or to/from Washington) when their contracts are consecutive.''

In accordance with 5 U.S.C. 5924(2), an employee assigned to a foreign area may be granted a transfer allowance. Using this authority, USAID grants FTA and HSTA to its direct-hire employees under its policies in Automated Directives System (ADS) 477, particularly FSOs, following Department of State Standardized Regulations (DSSR) 240 and 250 respectively, to offset expenses incurred by the employee incident to establishing oneself at any ''post of assignment'' abroad, or back in the U.S. for a new assignment after returning from a post abroad, subject to the employee fulfilling a requirement for continued service.

Based on the applicable definition of ''employee'' in 5 U.S.C. 5921(3), the Agency determined that USPSCs are not entitled to these allowances. The AIDAR has never authorized a benefit analogous to the FTA, HSTA, or any similar allowance in DSSR for USPSCs, because the Agency does not transfer a USPSC to another Mission under a directed assignment, unlike FSOs who are subject to worldwide availability and are thus required to move as a condition of continued employment.

In October 2020, USAID's Acting Administrator exercised the Agency's policy discretion to authorize the creation of a ''relocation expense'' benefit, as proposed by this rule, that mirrors applicable elements of the FSO transfer allowances. The proposed relocation expense benefit addresses two of the four portions of the FTA that the Agency has adapted appropriately to the PSC mechanism: (1) The miscellaneous-expense portion; and, (2) the pre-departure subsistence portion (similar to Sections 242.1 and 242.3 of the DSSR, respectively). The miscellaneous expense is a flat amount, calculated based on family size, to offset common relocation expenses such as are identified and estimated in the DSSR. The subsistence portion offsets temporary lodging costs incurred for up to 10 days before travel to post, using per-diem rates based on the U.S. locality of the USPSCs legal place of residence.

There are two contexts in which persons will be eligible for the two portions of the USAID USPSC relocation expense benefit: (1) An individual located in the U.S. who enters into a new contract for 12 consecutive months or more of continuous service abroad qualifies for both the miscellaneous and pre-departure subsistence expense portions (paragraphs (a) and (b) of the proposed regulatory text); and (2) a contractor currently performing services abroad as a USAID USPSC who undertakes a new, 12-month minimum USPSC contract for continuous service abroad at a different Mission immediately following their current contract qualifies only for the miscellaneous expense portion (paragraph (a)). The relocation benefit will not be authorized for USPSCs who are returning to the U.S. for a new USPSC contract with USAID because the Agency does not pay relocation costs for any new position in the U.S. under any of its staffing mechanisms.

The Agency determined that the principal rationale for the relocation benefit for USPSCs is equity between its USDH employees and USPSCs. Thus, the change in policy will provide USPSCs with a relocation benefit that is similar to that received by USAID's USDH to the practicable extent possible. USAID's provision of this benefit will establish a precedent among other U.S. Government departments and agencies that also contract for personal services.

III. AIDAR Changes

A. Paid Parental Leave

This proposed rule will revise appendix D, section 12, clause 5, ''Leave and Holidays,'' specifically to update the provision of family and medical leave to allow for any prior federal service to align with the provision of paid parental leave, and to add a separate new paragraph for the provision of paid parental leave itself.

B. Relocation Expense Benefit

AIDAR appendix D contains the Agency's standard contract terms and conditions for USAID's USPSCs, and this proposed rule amends section 12, General Provisions, with a new clause to provide the relocation expense fringe benefit authorized for USPSCs abroad.

IV. Regulatory Considerations and Determinations

A. Executive Orders 12866 and 13563

This proposed rule has been drafted in accordance with Executive Orders (E.O.s) 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equality). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. USAID has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in E.O.s 12866 and 13563, and determined that addressing the Agency's workforce equity concerns justifies the cost impacts of the changes proposed by this rule. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

B. Expected Cost Impact on the Public

As a regulatory matter, the cost of the rule-making process to incorporate these revisions into the regulation is also justified. The AIDAR's appendices include all the compensation and benefits available to personal services contractors. Therefore, the Agency needs these revisions to keep the regulation consistent, complete, and transparent to industry, other U.S. Government agencies, and the general public.

There are no costs to the public associated with this rulemaking. The Agency's direct costs for each benefit proposed by this revision is as follows:

1. Paid Parental Leave (PPL)

It is estimated that the average annual incremental cost to the Agency to provide the PPL benefit is $1.2 million starting in Year 1. This estimated cost assumes a base of 1,193 USPSCs and, over a 10-year period, an average of 47 USPSCs will make use of the PPL benefit each year. It further assumes each of the 47 USPSCs will take full advantage of 12 weeks of PPL paid leave for an average approximate cost of $25,600 per USPSC. The annual increase in cost to the Agency of providing the PPL benefit is 2.70% of the previous year's dollar cost. This 2.70% increase is a function of the assumed annual growth in the number of USPSCs and their salary and benefits.

2. Relocation Expense Benefit

The costs calculated for this benefit are based on upper end estimates to illustrate the potential impact of this added fringe benefit. The estimated average Year 1 cost to the Agency for the proposed relocation benefit, based on 537 USPSCs performing abroad, is $1.29 million. The estimated average cost over a five-year period is $6.45 million.

C. Regulatory Flexibility Act

The Director of the Office of Acquisition and Assistance in USAID's Bureau for Management, acting as the Head of the Agency for purposes of the

Federal Acquisition Regulation (FAR), certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Consequently, the Agency has not prepared a regulatory flexibility analysis.

D. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required.

List of Subjects in 48 CFR Chapter 7 Appendix D

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR chapter 7 as follows:

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT

■ 1. The authority citation for 48 CFR chapter 7, appendix D, continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

■ 2. Amend appendix D to chapter 7 as follows:

■ a. In sections 10 and 11, add provision number 30 to the list of General Provisions in the contract formats;

■ b. In section 12, under the Index of Clauses, add provision number 30;

■ c. In section 12, under General Provision number 5:

■ i. In the first sentence of paragraph (h), remove the word ''under'' and add in its place the words ''consistent with'';

■ ii. Revise paragraph (i)(3);

■ iii. In the fourth sentence of paragraph (i)(5), remove ''CO'' and add in its place the words ''contracting officer'';

■ iv. Redesignate paragraph (j) as paragraph (k); and

■ v. Add new paragraph (j); and

■ d. In section 12, add provision number 30.

The revisions and additions read as follows:

Appendix D to Chapter 7—Direct USAID Contracts With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

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10. Form USAID 1420–36, ''Cover Page'' and ''Schedule''

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General Provisions:

* * * * *

30. Relocation Expense

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11. Optional Schedule With a U.S. Citizen or U.S. Resident Alien

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General Provisions:

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30. Relocation Expense

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12. General Provisions for a Contract With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

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Index of Clauses

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30. Relocation Expense

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5. Leave and Holidays (NOV 2020)

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(i) * * *

(3) In accordance with 29 CFR 825.110, to be eligible for family and medical leave, the contractor must have—

(i) Been employed or under contract for at least twelve (12) months with a U.S. federal agency as a direct-hire or a personal services contractor; and

(ii) Performed at least 1,250 hours of service with a U.S. federal agency as a direct hire or a personal services contractor during the previous 12-month period immediately preceding the commencement of family and medical leave.

* * * * *

(j) *Paid Parental Leave.* (1) If the contractor is eligible for family and medical leave in accordance with paragraph (i) ''Family and Medical Leave'' of this clause, then instead of family and medical leave, the contractor may be authorized to take paid parental leave as specified in this paragraph, similar to that provided to USAID direct-hire employees. When authorized to do so by the contracting officer, the contractor may elect to substitute paid parental leave for up to twelve (12) workweeks of family and medical leave, as specified in paragraph (i) of this clause. The contractor may take such paid parental leave after the occurrence of the birth or placement of a child which results in the contractor assuming and continuing a parental role with respect to the newly born or placed child in accordance with the requirements of this paragraph (j).

(2) Paid parental leave may be taken intermittently or on a reduced leave schedule, subject to the mutual agreement of the contractor and their supervisor. Paid parental leave must be used no later than the end of the 12-month period beginning on the date of the birth or placement involved. At the end of that 12-month period, any unused balance of paid parental leave expires and is not available for future use. No payment will be made for unused or expired paid parental leave. Paid parental leave is not annual leave, and thus will not be included in any lump-sum payment for annual leave following completion or termination of the contract.

(3) To establish eligibility for paid parental leave, the contracting officer may require the contractor to provide documentation of entitlement and a signed certification. Appropriate documentation of entitlement is to show that the contractor's use of paid parental leave is directly connected with a birth or placement that has occurred, such as a birth certificate or a document from an adoption or foster care agency regarding the placement. By the signed certification, the contractor is attesting that the paid parental leave is being taken by the contractor in connection with the documented birth or placement, and that the contractor has a continuing parental role with respect to the newly born or placed child.

(4)(i) The contractor may not use any paid parental leave unless the contractor agrees in writing, before commencement of the leave, to return immediately after completing paid parental leave to continue performance under this contract for at least 12 workweeks. This 12-workweek period of performance obligation begins on the contractor's first scheduled workday after the contractor concludes taking such leave, whether taken consecutively or intermittently, regardless of the amount of leave taken. The period of performance obligation by the contractor is fixed at 12 workweeks regardless of the amount of leave used by the contractor.

(ii) Due to this 12-workweek mandatory period of performance obligation, the contracting officer will not authorize paid parental leave for use by the contractor within the last 12 workweeks before the contract end date, including option periods if any, regardless whether exercised. Within the last 24 workweeks of the contract, because of the mandatory 12-week period of obligation, the contracting officer will only authorize paid parental leave for any time remaining before the contract end date beyond the 12-week mandatory period of performance. Any paid parental leave taken by the contractor as well as the 12-week period of performance obligation must be completed by the contract end date, including any option periods, regardless of whether exercised.

(iii) If the contractor is eligible for paid parental leave, but is physically or mentally incapable of entering into the period of performance obligation agreement before the period of leave, such leave may be temporarily authorized, or retroactively invoked upon return to duty, subject to a determination that, in the Agency's judgment, the contractor was incapable of entering into such agreement in accordance with the requirements of this paragraph at the time of the commencement of the leave entitlement.

(5)(i) If, during the period of paid parental leave or of the required 12-workweek period of performance obligation, the contractor learns, or decides, they will not be able or willing to complete the period of performance obligation, the contractor must notify their supervisor and contracting officer of the situation as soon as possible. After receiving such notice, the contracting officer will coordinate with the supervisor to determine whether reimbursement is required in accordance with this paragraph.

(ii) If the contractor fails to return to work for the required 12-week obligation, the Agency will require reimbursement from the contractor of an amount equal to the total

amount of the Government contributions paid by the Agency to or on behalf of the contractor to maintain the contractor's health insurance coverage during the period of paid parental leave.

(iii) The contracting officer may waive the reimbursement requirement of this paragraph if the contractor is unable to fulfill the required 12-workweek obligation for any of the following reasons:

(A) In the Agency's judgment, the contractor is unable to return to work because of the continuation, recurrence, or onset of a serious health condition (including mental health) of the contractor or the newly born or placed child—but only if the condition is related to the applicable birth or placement; or

(B) in the Agency' judgment, the contractor is unable to return to work due to circumstances beyond the contractor's control that precludes performance under the contract; or

(C) the contracting officer terminates the contract for convenience in accordance with the clause entitled ''Termination'', or does not exercise any option period.

* * * * *

30. Relocation Expense Benefit

[Insert the following clause in contracts with USPSCs based abroad except Resident Hire USPSCs.]

Relocation Expense Benefit (DATE)

If the contractor's period of performance abroad is for twelve consecutive months or more, USAID may provide a one-time payment to assist the contractor with extraordinary relocation expenses as follows:

(a) A contractor legally residing in, and relocating from the U.S., its commonwealth, possessions or territories to an overseas post; or a personal services contractor relocating immediately from a prior USAID overseas post to the USAID overseas post under this contract, may receive a miscellaneous relocation expense payment of—

(1) $750 or the equivalent of one week's pay, whichever is the lesser amount, if the contractor is unaccompanied; or

(2) $1,500 or the equivalent of two weeks' pay, whichever is the lesser amount, if the contractor is accompanied with eligible family members.

(b) In addition, a contractor legally residing in, and relocating from the U.S., its commonwealth, possessions or territories to the cooperating country pursuant to this personal services contract may receive a pre-departure subsistence expense reimbursement for the contractor and each eligible family member for up to 10 days before final departure to the cooperating country abroad, beginning not more than 30 days after the contractor has vacated their residence, using the following partial flat rate method:

(1) An actual lodging amount (excluding lodging tax) up to the lodging portion of the per diem of the U.S. locality of the contractor's legal place of residence, and a flat amount equal to the meal and incidental expense (M&IE) portion of the per diem according to the formula below. In addition, the contractor may be reimbursed separately for taxes imposed on actual lodging expenses, if any. Receipts are required only for lodging.

(2) For the initial occupant, whether the contractor or accompanying eligible family member age 12 or over, a daily lodging amount not in excess of the published lodging portion of the per diem rate for the U.S. locality at which the occupant normally resides, and a flat amount equal to the meal and incidental expense portion of the referenced per diem rate to defray costs for meals, laundry and dry cleaning.

(3) For each additional occupant, whether the contractor or accompanying eligible family member age 12 or over, a daily lodging amount not in excess of 75% of the published lodging portion of the per diem rate for the U.S. locality at which the occupant normally resides, and a flat amount equal to 75% of the meal and incidental expense portion of the referenced per diem rate to defray costs for meals, laundry and dry cleaning.

(4) For each accompanying eligible family member occupant under age 12, a daily lodging amount not in excess of 50% of the published lodging portion of the per diem rate for the U.S. locality at which the occupant normally resides, and a flat amount equal to 50% of the meal and incidental expense portion of the referenced per diem rate to defray costs for meals, laundry and dry cleaning.

(5) A contractor and any accompanying eligible family member relocating from a place other than the U.S., its commonwealth, possessions or territories to the cooperating country, will not be eligible for the pre-departure subsistence expense portion of the relocation expenses.

(6) Expenses of local transportation are not allowable.

(c) The contractor must obtain approval for what is authorized in paragraphs (a) and (b) of this clause in the Travel Authorization (TA) issued by USAID to the contractor, in accordance with the Travel and Transportation Expenses clause. The contractor must claim reimbursement under the TA only after the contractor and all accompanying eligible family members, if any, have arrived in the cooperating country.

(d) If the contractor does not complete twelve consecutive months in the cooperating country, except for reasons beyond the contractor's control, the contractor will be liable to reimburse USAID for the amount of the relocation expense benefit received.

Mark Walther,

Chief Acquisition Officer.

[FR Doc. 2021–27944 Filed 1–12–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2019–0029; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BD71

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rules To List Graham's Beardtongue (Penstemon grahamii) and White River Beardtongue (Penstemon scariosus var. albifluvis) as Threatened Species and To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are withdrawing our August 6, 2013, proposed rules to list Graham's beardtongue (*Penstemon grahamii*) and White River beardtongue (*Penstemon scariosus* var. *albifluvis*) as threatened species throughout their ranges and to designate critical habitat for these two plant species under the Endangered Species Act of 1973, as amended (Act). These withdrawals are based on our conclusion that the stressors affecting the species as identified in the proposed listing rule are not as significant as previously understood at the time of publication of that proposed rule, such that the species do not meet the Act's definition of an ''endangered species'' or of a ''threatened species.'' Our conclusion is informed by an updated analysis of new and previous information concerning current and future stressors to the species and conservation efforts for them.

DATES: The U.S. Fish and Wildlife Service is withdrawing proposed rules published on August 6, 2013 (78 FR 47590 and 47832), as of January 13, 2022.

ADDRESSES: Relevant documents used in the preparation of this withdrawal are available on the internet at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2019–0029.

FOR FURTHER INFORMATION CONTACT: Yvette Converse, Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Office, 2369 W Orton Circle, Suite 50, West Valley City, UT 84119; telephone 801–975–3330. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish this document. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. In 2013, we issued proposed rules to list the Graham's beardtongue and White River beardtongue (beardtongues) and to designate critical habitat for the beardtongues. This document withdraws the proposed listing rule because we have now determined that the factors affecting the beardtongues as identified in that proposed rule are not as significant as previously understood in 2013, such that listing is not warranted for these species. Because we are withdrawing the proposed listing rule for the beardtongues, we also withdraw the proposed critical habitat designation for these species.

The basis for our action. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1)). We have determined that the stressors affecting the beardtongues as identified in the proposed listing rule (energy development, cumulative impacts from livestock grazing, invasive weeds, small population size, and climate change) are not as significant as previously understood at the time of publication of the proposed rule (*i.e.,* in 2013).

Previous Federal Actions

On August 6, 2013, we published a proposed rule to list Graham's beardtongue and White River beardtongue as threatened species (78 FR 47590) under the Act (16 U.S.C. 1531 *et seq.*). Please refer to that proposed rule for a detailed description of previous Federal actions concerning Graham's beardtongue and White River beardtongue prior to 2013. On August 6, 2013, we also published a proposed rule to designate critical habitat for both species (78 FR 47832). Following publication of our August 6, 2013, proposed rules, the same parties (Bureau of Land Management (BLM); U.S. Fish and Wildlife Service (Service); Utah Department of Natural Resources (DNR); State of Utah School and Institutional Trust Lands Administration (SITLA); Uintah County, Utah) that had drafted a 2007 conservation agreement (CA) for Graham's beardtongue and White River beardtongue reconvened to evaluate species' surveys and distribution information and to reassess the conservation needs of both Graham's and White River beardtongues. Based on this evaluation, the parties completed a new conservation agreement (2014 CA, entire) that specifically addressed the threats identified in our August 6, 2013, proposed listing rule (78 FR 47590). Additional signatories to the 2014 CA included the Utah Public Lands Policy Coordination Office (PLPCO) and Rio Blanco County, Colorado. While private landowners were not signatories to the 2014 CA, some private lands are designated as conservation areas under the 2014 CA, and Uintah County coordinates with and represents the interests of affected landowners.

In the 2014 CA, the parties committed to conservation actions including establishing 44,373 acres (ac) (17,957 hectares (ha)) of occupied and unoccupied suitable habitat as protected conservation areas with limited surface disturbance and avoidance of Graham's and White River beardtongue plants by 300 feet (ft) (91.4 meters (m)). Additionally, BLM agreed to avoid surface disturbances within 300 ft (91.4 m) of Graham's and White River beardtongue plants within and outside of conservation areas on BLM land. The parties also developed conservation measures to address the cumulative impacts from livestock grazing, invasive weeds, small population size, and climate change by continuing species monitoring, monitoring climate, reducing impacts from grazing when and where detected, and controlling invasive weeds.

On May 6, 2014, we announced the reopening of the public comment period on our August 6, 2013, proposed listing and proposed designation of critical habitat rules until July 7, 2014 (79 FR 25806). In that document, we also announced the availability of a draft economic analysis (DEA), draft environmental assessment (EA), draft 2014 CA, and amended required determinations section of the critical habitat proposal. We also announced the availability of 2013 survey results for Graham's and White River beardtongue plants and our intent to hold a public information meeting and public hearing.

On August 6, 2014, we withdrew the proposed rule to list Graham's beardtongue and White River beardtongue as threatened species (79 FR 46042). That withdrawal was based on our conclusion that the threats to the species as identified in the August 6, 2013, proposed listing rule were no longer as significant as we previously determined, such that the species did not meet the Act's definitions of an ''endangered species'' or of a ''threatened species.'' We based this conclusion on our analysis of new information concerning current and future threats to the species and conservation efforts. As a result, we also withdrew our associated August 6, 2013, proposed rule to designate critical habitat for these species.

On March 26, 2015, a complaint was filed in the District Court for the District of Colorado by Rocky Mountain Wild, Center for Biological Diversity, Utah Native Plant Society, Southern Utah Wilderness Alliance, Grand Canyon Trust, Western Resource Advocates, and Western Watersheds Project challenging the withdrawal of the proposal to list Graham's beardtongue and White River beardtongue (*Rocky Mountain Wild* v. *Walsh,* No. 15–615 (D. Colo. filed Mar. 26, 2015)). The State of Utah, SITLA and PLPCO, and Uintah County, Utah, intervened in the litigation (Mot. to Intervene, ECF No. 10). On October 25, 2016, the court found that the withdrawal was contrary to the Act because (1) we concluded that yet-to-be-enacted regulatory and non-regulatory measures mandated by the 2014 CA were ''existing regulatory mechanisms''; (2) we failed to account for the 2014 CA's expiration when determining whether the beardtongues face material threats in the ''foreseeable future''; and (3) we took into account economic considerations when imposing a 300-ft (91.4-m) buffer zone around each beardtongue (Order Vacating Admin. Action and Req. Meet-and-Confer Between the Parties, ECF No. 59).

However, before entering final judgment, the court ordered that the parties meet to discuss whether the 2014 CA could be modified in a manner satisfactory to plaintiffs. Those meetings occurred, but in a December 15, 2017, Joint Status Report to the court, the parties reported that they were unsuccessful at reaching agreement. Therefore, on December 18, 2017, the court entered final judgment, vacating our August 6, 2014, withdrawal, and reinstating the proposed listing and critical habitat rules. As a result, the August 6, 2013, proposed listing and

critical habitat rules (collectively referred to as the 2013 proposed rules) for Graham's beardtongue and White River beardtongue were reinstated, and both species once again became proposed for listing under the Act. The court did not establish a firm deadline for us to reach a new final listing determination but provided that plaintiffs could return to the court to seek such a deadline if the Service did not publish a new final determination by September 30, 2019. The plaintiffs have not yet done so.

On September 12, 2019, we reopened the comment periods on the 2013 proposed rules for 30 days, ending October 15, 2019 (84 FR 48090). We also announced that we would reevaluate the status of both species to determine whether they meet the Act's definition of an ''endangered species'' or of a ''threatened species,'' or whether they are not warranted for listing. We invited the public to comment on the 2013 proposed rules, and we requested new information regarding Graham's beardtongue and White River beardtongue that had become available since the publication of the 2013 proposed rules to inform our evaluation. We also announced the availability of new survey and monitoring information that had become available since the publication of our 2013 proposed rules, and we announced the availability of the final 2014 CA, a 2018 addendum to the 2014 CA, and modified conservation areas under the 2014 CA.

Supporting Documents

We prepared two Biological Reports for Graham's beardtongue and White River beardtongue (Service 2021a, Service 2021b) (hereafter referred to as the Biological Reports), using concepts from the Service's species status assessment (SSA) framework (Smith et al. 2018, entire). The first Biological Report (Service 2021a, entire) represents a compilation of the best scientific and commercial data available concerning the current condition of the two species, including the impacts of past and present influences (both negative and beneficial) on the beardtongues, as well as a discussion of our recommendations for avoidance buffers and surface disturbance caps. The second Biological Report (Service 2021b, entire) represents a compilation of the best scientific and commercial data available concerning the projected future condition of the two species, including the impacts of influences (both negative and beneficial) that are anticipated to affect the beardtongues into the future. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of three appropriate subject matter specialists regarding our Biological Report of Current Condition and five appropriate subject matter specialists regarding our Biological Report of Future Condition for the two beardtongues. We received responses from three specialists on our Biological Report of Current Condition and from four specialists on our Biological Report of Future Condition, which informed the underlying analysis and scientific basis for this document. (Some peer reviewers reviewed both biological reports). In preparing this listing determination, we incorporated the results of these reviews into our final biological reports, as appropriate.

We also sent the Biological Reports to partners, including the signatories to the 2014 CA (BLM; Utah DNR; SITLA; PLPCO; Uintah County, Utah; Rio Blanco County, Colorado). The Biological Reports and other materials relating to this listing determination can be found on the Mountain-Prairie Region website at *https://www.fws.gov/mountain-prairie/es/GrahamsAndWhiteRiverBeardtongue.php* and at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0029.

Summary of Comments and Recommendations

As stated above under Previous Federal Actions, on August 6, 2013, we published proposed rules to list Graham's beardtongue and White River beardtongue as threatened species and to designate critical habitat (78 FR 47590 and 47832). These proposed rules each had a 60-day comment period, ending October 7, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposals. Newspaper notices inviting general public comment and announcing our informational meeting and public hearing were published in the Salt Lake Tribune, Deseret News, and Uintah Basin Standard. On May 6, 2014, we announced the reopening of the public comment period on our 2013 proposed listing and proposed designation of critical habitat rules until July 7, 2014 (79 FR 25806). We received requests for a public hearing, which was held in Vernal, Utah, on May 28, 2014.

Subsequently, we withdrew the 2013 proposed rules and then later reinstated them following litigation. As a result, on September 12, 2019, we again reopened the comment period on the 2013 proposed rules for 30 days (84 FR 48090). We then developed two Biological Reports regarding the two species' current and future conditions (Service 2021a, 2021b), each of which underwent peer review. Responses to comments we received during the comment period for our September 12, 2019, document and from peer reviews of the Biological Reports are provided below. For additional responses to comments for which there is no updated information since 2014, please see the August 6, 2014, withdrawal of the 2013 proposed rules (79 FR 46042). All substantive information provided during all peer reviews and all comment periods has either been incorporated directly into this final determination or our Biological Reports as appropriate or is addressed below. Comments related to our 2013 proposed critical habitat designation are not addressed here; given the decision to withdraw the listing proposal, no further assessment of the proposed critical habitat designation is necessary at this time.

Peer Review Comments

We reviewed all comments on the Biological Reports that we received from the peer reviewers for substantive issues and new information regarding the beardtongues. One peer reviewer provided favorable support of the metrics used to evaluate the beardtongues' current and future condition and provided no edits to the documents. Three peer reviewers provided additional information, clarifications, and suggestions, which we have either incorporated into the Biological Reports or addressed below.

(1) *Comment:* One reviewer stated that it does not seem logical that large Graham's beardtongue populations contain such a wide range of plant abundance (between 171 and 19,735 plants). The reviewer recommended that we provide different delineations of small, medium, and large population sizes for the beardtongues, and they suggested the following categories: Small population size between 0 and 100 plants; medium population size between 101 and 1,000 plants; and large population size greater than 1,000 plants.

Our Response: The recommendation may be appropriate for species that do not have a population viability analysis (PVA), or a peer-reviewed PVA. However, we delineated the population size categories based on a peer-reviewed PVA for the beardtongues. We calculated the extinction risk of each beardtongue population and considered large Graham's beardtongue populations to have an extinction risk of less than

five percent over a 50 year period (USFWS 2021a, pp. 59–61). Large Graham's beardtongue populations must have a minimum of 131 plants and the largest population with 19,735 plants (population 27) has a much lower extinction risk (less than one percent) compared to another population with 171 plants (between four and five percent). Our large population delineation identifies a lower threshold than what the reviewer suggested since it is based on a species-specific evaluation rather than generalized categories that do not take into account a species' life history or demography. We considered the PVA results to provide the best available information to delineate the beardtongues' population size categories, and as such did not make any changes in response to this comment.

(2) *Comment:* One reviewer recommended that our 300-ft (91.4-m) avoidance buffer incorporate pollinator foraging distances for the primary pollinators to ensure adequate beardtongue pollination and reproduction.

Our Response: We considered the effects to individual plants, populations, and pollinators when developing our avoidance buffer and surface disturbance cap recommendations. Our recommended 300-ft (91.4-m) avoidance buffer protects individual beardtongue plants from occupied habitat loss and effects from fugitive dust and invasive weeds. Our recommended surface disturbance caps limit pollinator habitat loss and were designed to be used in tandem with the avoidance buffer to maintain population-level processes such as visitation and gene flow by pollinators as well as the condition of the beardtongues' populations. We evaluated pollinators and their needs at the beardtongue population level to support gene flow between plants and population-level reproduction rather than at an individual plant level. We incorporated pollinator foraging distances into our surface disturbance cap recommendation to restrict the amount of habitat loss and fragmentation within a beardtongue population's pollinator habitat. We delineated a population's pollinator habitat based on the foraging distance of the beardtongues' largest pollinators: 2,297 ft (700 m) for Graham's beardtongue and 1,640 ft (500 m) for White River beardtongue. Based on our review of the best available information and current habitat loss within pollinator habitat of beardtongue populations, the needs of pollinators and beardtongue reproduction can be supported even with some loss of pollinator habitat that occurs outside of the 300-ft (91.4-m) plant avoidance buffer (USFWS 2021a, Appendix E). Current levels of habitat loss within the pollinator habitat of long-term monitoring plots are low, ranging from zero to five percent, with no statistically significant negative effects to pollinator visitation or beardtongue reproduction (USFWS 2021a Appendix E). Published literature indicates that these negative effects are realized after considerable habitat loss has occurred for other species and habitats (USFWS 2021a Appendix E). Our recommendations are consistent with supporting the needs of pollinators and population-level gene flow within relatively intact habitat conditions. Together, the avoidance buffer and surface disturbance caps within conservation areas should conserve beardtongue plants and their pollinators from stressors at two different scales.

(3) *Comment:* One reviewer commented that our knowledge of the beardtongues' current distribution is incomplete due to lack of surveys on Tribal lands and the State of Utah Department of Wildlife Resources lands in Range Unit 2. Surveys are needed in these areas.

Our Response: We acknowledge the lack of surveys in these areas in our Biological Reports. Our determinations on listing the two species are based on the best available scientific information.

(4) *Comment:* One reviewer commented that we omitted review surveys, impacts, and new information for the beardtongues from the Questar Mainline 103 pipeline replacement project. White River beardtongue plants had established in a roadside berm that was created by the initial disturbance between 2009 and 2012. Field observations indicate that White River beardtongue plants were able to establish or reestablish in roadcuts and other disturbance areas.

Our Response: We reviewed the 2012 environmental assessment prepared by the Federal Energy Regulatory Commission (FERC) for this project, and pre-construction surveys were performed for the beardtongues; however, no beardtongue plants were located within the project right-of-way. We mention in the Biological Reports that White River beardtongue occupies some disturbance areas and exhibits some tolerance to habitat disturbance.

(5) *Comment:* One reviewer commented that it may be worth noting that sparsely vegetated shale barren habitat on ridgelines that are considered potential habitat for the beardtongues are attractive off-road vehicle (OHV) routes.

Our Response: We mention the potential for OHV use to occur in the beardtongues' habitat in the Biological Reports. However, the best available information does not indicate that OHV use is occurring there or impacting plants or populations. Therefore, we did not consider OHV use as a stressor in our analysis.

(6) *Comment:* One reviewer commented that the beardtongues' survey results in the Red Leaf lease area on State lands may not be included in the population estimates or maps provided in the draft Biological Report.

Our Response: We reviewed our dataset and confirmed that the beardtongues' survey results for this area are included in the population estimates and maps provided in the Biological Report.

(7) *Comment:* One reviewer recommended that we include the 2020 beardtongues' survey results in Colorado in the Biological Reports.

Our Response: We added the 2020 survey results to the Biological Reports and considered them in our evaluation of the beardtongues' current and future condition. These survey results increased the number of Graham's beardtongue plants in population 22 by 565 plants and reduced the number of White River beardtongue plants in population 10 by 1,039 plants.

(8) *Comment:* One reviewer questioned whether the high energy development scenario is plausible over the next 10 years because of the lack of oil shale commercial development in the Uinta Basin and the checkerboard pattern of landownership that would add complexity, time, and uncertainty to the development of these lands.

Our Response: We intended the high energy development scenario to illustrate the worst-case impacts from energy development. We also recognize that this scenario, while plausible, may be less likely to occur than other scenarios, and that actual future impacts may range anywhere between that scenario and the current condition.

Public Comments

(9) *Comment:* Several commenters stated that the Service should complete an updated threat assessment and provide the public with an opportunity to comment prior to making a final listing determination and critical habitat designation. Commenters believe that threats documented in the 2013 proposed listing rule are still present and oil spills from pipeline ruptures are a new threat associated with energy development that was not previously addressed. Commenters stated that White River beardtongue should be

listed as an endangered species, not a threatened species, due to imminent threats. One commenter mentioned the landscape surrounding beardtongue populations in Colorado has been heavily fragmented by existing energy development infrastructure; if completed, a proposed rail line in the Uinta Basin could increase energy development impacts to the beardtongues.

Our Response: We completed a new threat assessment that is presented in our Biological Reports (Service 2021a, entire; 2021b, entire), and summarized in this document. We evaluated stressors to the beardtongues and considered new information, including current and projected future levels of habitat loss and fragmentation within the beardtongues' pollinator habitat and planned projects including the proposed Uinta Basin rail line. The best available information does not indicate that negative impacts to the beardtongues have occurred or are expected to occur from oil spills.

(10) *Comment:* Multiple commenters mentioned the need for improved surface disturbance caps and buffers to protect the plants from negative impacts from development. The 300-ft (91.4-m) buffer from surface-disturbing activities as outlined in the 2014 CA is less than the 2,297-ft (700-m) proposed critical habitat area surrounding known occurrences; buffers of at least 650 ft (200 m) are needed to conserve pollinators until the research by Barlow and Pavlik is completed to determine minimum habitat areas for populations.

Our Response: We evaluated the best available information to inform our recommended avoidance buffer and surface disturbance caps in our Biological Report of current condition (Service 2021a, pp. 81–82). For more information refer to our response to Comment 2, above. We did not rely on the Barlow and Pavlik road impact evaluation to inform our avoidance buffer recommendation, because we and a peer reviewer identified concerns regarding their assumption that roads were major drivers of the beardtongues' plant size and reproductive effort, and the lack of evidence supporting this assumption from published literature (Barlow and Pavlik 2020, entire; McNellis 2021a and 2021b, entire; Service 2021a, p. 41). We considered the Barlow and Pavlik road impact evaluation to be an exploratory model where the results are predictions to be tested and do not demonstrate causation (Service 2021a, p. 41).

(11) *Comment:* Multiple commenters were concerned that the conservation areas in the 2014 CA protect less acreage (44,373 ac) than the amount of area that was proposed for critical habitat (67,959 ac (27,502 ha)). The 2014 CA protects only 78 percent of the population of Graham's beardtongue and 59 percent of the population of White River beardtongue; the conservation areas do not include all White River beardtongue plants and habitat in the Book Cliffs, which the commenters believed was insufficient. They recommend expanding conservation areas on Federal and State lands to avoid listing both species as threatened under the Act. Multiple commenters stated that critical habitat should include all plants identified in surveys to-date. Three commenters stated that research on White River beardtongue identified the taxon has small and isolated populations with low levels of genetic diversity (Rodriguez-Peña *et al.* 2018), and it is important to protect habitat for as many populations as possible to ensure future genetic viability.

Our Response: There are many ways to achieve conservation of the beardtongues. The proposed critical habitat designation identified all populations known in 2013, with the understanding that critical habitat alone would not convey or guarantee conservation, because critical habitat protections for plants do not apply on non-Federal lands without a Federal action. The proposed critical habitat designations for the two beardtongue species overlapped and totaled 75,846 ac (30,694 ha). Proposed critical habitat on Federal lands alone would apply to only 38 percent of the population of Graham's beardtongue (21,301 plants) on 41,668 ac (16,862 ha), and 27 percent of the population for White River beardtongue (7,942 plants) on 5,758 ac (2,330 ha) (Service 2021a, Appendix B, p. 86). The 2014 CA conserves a smaller amount of habitat in designated conservation areas (42,993 ac (17,399 ha)) than we proposed as critical habitat but provides protections to a similar percentage of the Graham's beardtongue population and a much larger percentage of the White River beardtongue population than afforded by proposed critical habitat on Federal lands. The 2014 CA protects 41 percent of Graham's beardtongue plants (23,333 plants) and 66 percent (19,710 plants) of White River beardtongue plants on Federal and non-Federal lands (Service 2021b, pp. 44–45). The 2014 CA conservation areas support 1,094 White River beardtongue plants in the Book Cliffs population to maintain a large population size with a low risk of extinction (less than 5 percent risk of extinction over a 50-year period). In addition, the conservation areas are strategically placed to provide habitat connectivity, thereby conserving the resiliency, redundancy, and representation (*e.g.,* genetic diversity) of the beardtongues across their ranges (Service 2021a, pp. 42–45; Penstemon Conservation Team 2014, entire; Penstemon Conservation Team 2018b, 2018c, entire).

(12) *Comment:* Multiple commenters expressed concern that the private parties will end their participation in the 2014 CA in 2029.

Our Response: The duration of the 2014 CA is 20 years (until 2034) for Federal, State, and county parties, and 15 years (until 2029) for private parties. During this time, we hope that information regarding the likelihood of energy development beyond 2030 becomes available. We committed to assess the status of the beardtongues by December 31, 2028, prior to the private parties leaving the agreement. If, during or after this timeframe, either species meets the Act's definition of an ''endangered species'' or a ''threatened species,'' we can act to protect the species through the listing process. If the beardtongues are listed under the Act, the 2014 CA expires to avoid a situation where the parties are bound to both the commitments in the agreement and the requirements of the Act. This conservation framework provides a consistent regulatory framework for landowners or managers who may be affected, while still protecting the beardtongues under either scenario.

(13) *Comment:* Commenters expressed concern that the voluntary nature of the 2014 CA by private parties is inadequate and will lead to inconsistent management of the beardtongues. The Federal agencies do not have regulatory mechanisms in place to enforce the conservation measures in the 2014 CA on Federal land, and there are no regulatory mechanisms in place that provide the necessary landscape-level protections to the beardtongues from the threats identified in the 2013 proposed rules. The results of livestock monitoring and assessments were not made available to the public; commenters questioned whether monitoring was conducted according to the schedule identified in the livestock grazing plan.

Our Response: The 2014 CA was developed by county, State, and Federal entities that have the authority to regulate and permit activities on lands within their jurisdiction that overlap with the beardtongues' habitat. These parties are implementing the voluntary agreement and providing protections to the beardtongues that we considered in

this listing determination. We summarize the regulatory mechanisms implemented by each party, the accomplishments of the 2014 CA, livestock monitoring, and corrective actions in our 2021 Biological Reports (Service 2021a, pp. 42–45, 54–56; 2021b, pp. 43–48).

(14) *Comment:* Multiple commenters stated the beardtongues continue to be at risk of extinction due to small population size and isolation. The 2018 population size is misleading and unknown because: (a) Surveys were performed inconsistently and haphazardly across the beardtongues' ranges and were not derived from annual censuses or a scientifically robust sampling design; (b) plants counted in one year may have been counted in subsequent years; and (c) the Service's assumptions that no previously documented plants have died of natural or human causes or that all previously documented plants have been replaced by new plants are incorrect, and there is no data to support them. One commenter noted that some beardtongue species tend to form an extended underground root system and that the beardtongues' total population sizes could be much smaller than our population estimates.

Our Response: We stated in our 2021 Biological Reports and past rulemakings that the total known number of beardtongues has increased over time based on new survey information rather than increasing population trends. Our 2018 population estimates were based on long-term demographic monitoring information that indicate adult beardtongue plants are long-lived (30 years or more) and maintain high survival rates, and populations are generally stable (Pavlik et al. 2015, entire). Therefore, it is reasonable to assume that plants continue to persist on the landscape unless there is human modification of the habitat, or there are high-intensity sheep grazing incidents. We and our partners reviewed all survey information and removed duplicate records to minimize the double-counting of individual plants. There is no indication that the beardtongues form extended underground root systems based on past excavations and translocations of individual plants.

(15) *Comment:* Multiple commenters requested an extension of the public comment period and the release of survey results and livestock monitoring data that became available after the publication of the 2013 proposed rules.

Our Response: We have held three comment periods on the proposed rules. We held our first comment period for 60 days, from August 6 to October 7, 2013 (see 78 FR 47590 and 47832); our second comment period for 60 days, from May 6 to July 7, 2014 (see 79 FR 25806), during which we also held a public information meeting and public hearing on May 28, 2014; and our third comment period for 30 days, from September 12 to October 15, 2019 (see 84 FR 48090). Therefore, we have provided sufficient opportunities for the public to comment on the proposals. During each of the three comment periods, we made available any survey and livestock monitoring data that we had at that time. Specifically, during our third public comment period in 2019, we announced the availability of the latest survey results and other information that had become available since 2013.

(16) *Comment:* One commenter stated that incompatible livestock grazing is occurring on Federal lands, all beardtongue sites within Federal conservation areas should meet BLM Rangeland Health Standards, and monitoring should continue to assess habitat conditions and inform management decisions.

Our Response: Livestock grazing appears to be compatible with conservation of the beardtongues except for intensive sheep grazing events that occur in localized areas (USFWS 2021a, pp. 54–56). The BLM is addressing livestock impacts to the beardtongues on Federal lands as per the 2014 CA. The 2014 CA states that BLM will monitor beardtongues' impacts from grazing and will adjust grazing regimes accordingly to reduce associated impacts. For example, BLM implemented corrective actions that were successful in removing grazing impacts to Graham's beardtongue in the Raven Ridge Area of Critical Environmental Concern (ACEC) in Colorado, and BLM continues to monitor livestock impacts to the beardtongues and evaluate rangeland health (Service 2021a, p. 55). BLM is required to manage rangelands as per the requirements of 43 CFR part 4100, subpart 4180 (''Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration'' (Rangeland Health)) and implement the agency's policy guidelines identified in the Standards for Rangeland Health.

(17) *Comment:* A commenter stated that surface disturbance of all kinds affects the beardtongues' pollinators; cattle trampling results in greater impacts to the ground surface than other herbivores.

Our Response: The best available information indicates that the beardtongues maintain a diverse pollinator assemblage and adequate reproduction under permitted grazing regimes. Monitored populations of the beardtongues that overlap active grazing allotments reproduce by seed on an annual basis and demonstrate reproductive rates that are not pollinator-limited (Barlow and Pavlik 2020, p. 5).

(18) *Comment:* A commenter stated that monitoring reports indicate that herbivory from many sources may impact the beardtongues' ability to successfully replenish the seedbank. Herbivory resulted in high levels of stress to Graham's beardtongue in 2014, and low seedling survivorship.

Our Response: Herbivory to the beardtongues appears to be a natural stressor to beardtongue individuals and is primarily attributed to native grazers (*e.g.,* rodents, rabbits), rather than livestock (Service 2021a, p. 54). Monitored populations of both species continue to remain stable despite the regular frequency, and occasional high levels, of herbivory.

(19) *Comment:* The State of Utah provided information that the number of new oil and gas wells dropped by 67 percent between 2014 and 2015, due to the drop in crude oil and natural gas prices; should prices rebound, the increasing use of horizontal well drilling could reduce the amount of future surface disturbance. Should the market demand for oil shale increase to an economically favorable price, development of this resource may be focused on the richer Piceance Basin in Colorado rather than on the Uinta Basin in Utah. Because of the low likelihood of development from oil and gas in the foreseeable future, the Service should not list the beardtongues. Another commenter stated that a determination to list a species as a threatened species under the Act requires a determination as to the likelihood rather than the mere prospect that a species will or will not become endangered in the foreseeable future. The likely threshold of Graham's and White River beardtongues to become an endangered species in the foreseeable future was suspect in the August 6, 2013, proposed listing rule (78 FR 47590); was mitigated by the 2014 CA; and is better stated as unlikely with the discoveries of new populations, the species' range expansion, and the success in research resulting from the 2014 CA.

Our Response: We note that the Act defines a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range''. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably

determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. See the *Regulatory Framework* section below for further information on how we make determinations on whether to list a species under the Act.

We evaluated the likelihood and location of future energy development (oil shale, tar sands, traditional oil and gas development) within the beardtongues' ranges in our Biological Reports based on the best available information, expert opinion, and peer review (Service 20201a, pp. 45–54; Service 20201b, pp. 15–38, Appendix). Our analysis of projected future energy development evaluates worst-case impacts under the moderate and high energy development scenarios until 2030, which is the date through which reliable predictions can be made based on current information.

(20) *Comment:* Commenters including the State of Utah stated that the rangewide population estimates for the beardtongues have greatly increased since 2013. The known population of Graham's beardtongue increased by 177 percent, and the known population of White River beardtongue increased by 284 percent.

Our Response: As stated by the commenters, the rangewide population estimates for the beardtongues have greatly increased since 2013, based on new survey information and a genetic evaluation of White River beardtongue. Although we want to emphasize that the increase in population size does not mean the total population is increasing. Rather, additional survey results provide a more complete picture of how many beardtongue plants exist across their ranges (USFWS 2021a, pp. 21, 28). Monitoring indicates the beardtongue populations are stable in size.

(21) *Comment:* The State of Utah and other commenters expressed support for the 2014 CA as an appropriate regulatory mechanism to promote research, surveys, and stakeholder engagement. Uintah County, Utah, enacted a zoning ordinance for a 15-year period until 2029, to apply surface disturbance caps and implement a 300-ft (91.4-m) avoidance buffer for 2014 CA conservation areas on private lands. The signatories to the 2014 CA have provided considerable staff time and funding to implement the agreement; successfully implemented surveys, research, monitoring, and planning commitments; expanded conservation areas; committed to providing a summary report of accomplishments every 5 years; and extended the 2014 CA protections on State and Federal lands for a total of 20 years until July 25, 2034. Uintah County expressed their commitment to the conservation of the beardtongues and stated the goal of the 2014 CA is to ensure the beardtongues thrive long after the expiration of the agreement.

Our Response: The signatories are implementing the 2014 CA, and their many contributions were summarized by State members of the agreement (Sheppard and Wheeler 2020, entire). New commitments made by signatories were summarized in the 2014 CA's 2018 addendum, which includes the Service's commitment to assess the beardtongues' status by December 31, 2028. We have considered the 2014 CA and its 2018 addendum in this listing determination.

Background

A comprehensive review of the taxonomy and morphology, habitat, life history and resource needs, population distribution and status, and pollinator information for both Graham's beardtongue and White River beardtongue is presented in our Biological Report of current condition (Service 2021a, pp. 13–41) and is briefly summarized here.

Graham's and White River beardtongues are endemic plants found in northeastern Utah and northwestern Colorado. Graham's beardtongue occurs in 27 populations, with a total population of 56,385 individuals, across the Uinta Basin in Duchesne and Uintah Counties in Utah and Rio Blanco County in Colorado (Service 2021a, pp. 21–27). White River beardtongue occurs in 17 populations, with a total population of 29,902 individuals across the Uinta Basin and at an isolated location in the Book Cliffs in Grand and Uintah Counties in Utah and Rio Blanco County in Colorado (Service 2021a, pp. 28–33). For the purposes of our analysis, we grouped the populations for each species into five range units (*i.e.,* metapopulation areas). The two species overlap with each other in four of their range units in the central and eastern portion of their ranges in Utah and Colorado. The occupied habitat area for Graham's and White River beardtongues is 9,585 ac and 3,462 ac of habitat, respectively. Their pollinator habitat area includes beardtongue occupied habitat and a larger pollinator foraging area, which collectively comprise 91,232 ac and 29,476 ac for Graham's beardtongue and White River beardtongue, respectively.

Graham's and White River beardtongues have highly specific soil requirements and occupy exposed oil shale strata of the Green River geologic formation. The beardtongues are long-lived perennial plant species that flower in the spring and summer months, and both species require pollinators for maximum plant reproduction. Plant survival and successful recruitment require suitable soils with microsites for establishment and growth. The sparse canopy coverage of associated vegetation likely results in low competition from other plants, and the beardtongues appear to be poor competitors with weeds. Reproductive success and maintenance of genetic diversity of these two beardtongues require habitat that supports generalist and specialist pollinators, primarily bees and a specialist wasp. For more detailed information about the biology of both beardtongue species, see our Biological Report of current condition (Service 2021a, pp. 13–41).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are

known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The Biological Reports document the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the two species, including an assessment of the potential threats to the species. The Biological Reports do not represent a decision by the Service on whether these species should be listed as endangered or threatened species under the Act. However, they do provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following discussions provide summaries of the key results and conclusions from the Biological Reports; the full Biological Reports can be found on the Mountain-Prairie Region website at *https://www.fws.gov/mountain-prairie/es/GrahamsAndWhiteRiverBeardtongue.php* and at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0029.

To assess Graham's beardtongue and White River beardtongue viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310; Smith et al. 2018, p. 304) (hereafter referred to as the 3Rs). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

Our Biological Reports used many of the concepts of the Service's SSA framework (Smith et al. 2018, entire) and followed sequential stages to characterize the viability of the Graham's and White River beardtongues. In our Biological Report of current condition (Service 2021a), we first evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how each species arrived at its current condition. In our Biological Report of future condition (Service 2021b), the final stage involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decisions.

Summary of Biological Status and Threats

In preparing the Biological Reports for Graham's and White River beardtongues, we reviewed available reports and peer-reviewed literature, we incorporated survey information, and we sought information from experts regarding the species' primary stressors to further refine our analysis. We identified uncertainties and data gaps in our assessment of the current and future status of both species. In this discussion, we briefly summarize the biological condition of both species and their resources, the influence of those conditions on the species' overall viability, and the risks to that viability. For a full description of our analysis of each species' biological status, current condition, and projected future condition, see our Biological Reports (Service 2021a, 2021b).

Life-History Needs

At the individual level, both Graham's beardtongue and White River beardtongue need suitable soils (shallow soils with virtually no soil horizon development with a surface usually mixed with fragmented shale), suitable precipitation (6 to 12 inches annually), and suitable temperatures (including a minimum of 45 consecutive days less than 40 degrees Fahrenheit (°F) in the winter months) to support plant growth (Service 2021a, pp. 17, 20). To support plant reproduction, the plants need visitation and pollination by bee and wasp pollinators, and floral resources for pollinators provided by the associated plant community, including

the presence of other beardtongue species (Service 2021a, pp. 17, 20). Suitable microsites that provide cover or shelter for seed germination, establishment, and growth are also needed to support both species (Service 2021a, pp. 17, 20).

For Graham's and White River beardtongues to maintain viability, their populations or some portion of their populations must be sufficiently resilient (*i.e.,* able to sustain populations in the face of environmental variation). At the population level, important habitat needs for the beardtongues include: (1) Suitable soil substrate to maximize recruitment and survival within the population (soil and microsite quality); (2) sufficient floral resources to ensure pollinator visitation and maximize adult reproductive output; (3) suitable climate conditions (temperature, moisture) within species' physiological tolerances to maximize population growth and size; and (4) sufficient seed dispersal and contribution to the seed bank to support population stability or growth. If these habitat factors occur over an area of sufficient size to support a sufficient population size and the demographic needs of the species, we anticipate plant populations will retain sufficient resiliency to withstand natural stochastic events (Service 2021a, pp. 33–34).

Based on their population demographics, we expect that survival of established plants (*i.e.,* vegetative and adult (reproductive) plants) and high reproductive output are the most important factors contributing to the growth rate and size of populations (Service 2021a, pp. 34–35). Lastly, resiliency of populations is also influenced by the degree of connectivity among populations (Service 2021a, p. 35).

At the species level, Graham's and White River beardtongues each need multiple, sufficiently resilient, connected populations that represent the range of ecological and genetic diversity across their ranges (Service 2021a, p. 35). Populations that are connected allow for immigration and emigration across the landscape and ensure gene flow and recolonization following extirpation of individual sites or populations (Auffret et al. 2017, pp. 1–3). In order to adapt to changing physical and biological conditions, each species needs to maintain its genetic and ecological diversity (representation) and an adequate number and distribution of sufficiently resilient populations across its range (redundancy).

Because the beardtongues rely on pollinators to maximize seed production and genetic diversity of plant populations, we also note that the persistence of the pollinator assemblage for Graham's and White River beardtongues depends on maintaining nesting sites and floral resources to support pollinator needs (Service 2021a, pp. 35–36). Broadly, the needs of Graham's and White River beardtongue pollinators include intact habitat conditions and an abundance of floral resources throughout the growing season. For an in-depth discussion of the beardtongues' pollinator assemblage, pollinator life history, and the needs of pollinators, see our Biological Report on current condition (Service 2021a, pp. 35–41).

Summary of Factors Influencing Viability

As mentioned above in *Regulatory Framework,* a species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Potential stressors we evaluated for Graham's and White River beardtongue in our Biological Reports included: Three types of energy exploration and development: Oil shale, tar sands, and traditional oil and gas drilling (Factor A); road construction (Factor A); herbivory (Factor C); invasive weeds (Factor A); small population size (Factor E); and climate change (Factors A and E). We also evaluated how existing regulatory mechanisms (Factor D) or other conservation measures (primarily the 2014 CA and 2018 addendum) may lessen the impacts of these stressors. The best available information does not indicate that overutilization (Factor B) is a threat to either beardtongue species. A brief summary of the potential factors affecting Graham's and White River beardtongues is presented below; for a full description of our evaluation of the effects of these stressors and conservation efforts, refer to the Biological Reports (Service 2021a, pp. 41–63; Service 2021b, pp. 15–48).

Conservation Agreement

Following publication of our August 6, 2013, proposed rules (78 FR 47590 and 47832), we entered into a 2014 CA with the following parties: BLM; Utah DNR; SITLA; Uintah County, Utah; the Utah PLPCO; and Rio Blanco County, Colorado (Penstemon Conservation Team 2014, entire). The 2014 CA was designed to specifically address the threats identified in our August 6, 2013, proposed rule to list the two species (78 FR 47590), and expand the protections afforded to the beardtongues on Federal lands. The 2014 CA also provides the species protections on certain non-Federal lands.

The parties committed to a number of conservation actions, including the establishment of 44,373 ac (17,957 ha) of occupied and suitable habitat as protected conservation areas on Federal and non-Federal lands. Within the designated conservation areas, surface disturbance caps are applied to limit the loss and fragmentation of habitat from development, in conjunction with a 300-ft (91.4-m) avoidance buffer between disturbance and beardtongue plants. Uintah County enacted an ordinance to enforce the surface disturbance caps and avoidance buffer within conservation areas on private lands (Penstemon Conservation Team 2014, pp. 28, 35). Additionally, BLM implements a minimum 300-ft (91.4-m) avoidance buffer wherever beardtongue plants occur on Federal lands, as identified in BLM's resource management plans. The parties also developed monitoring plans that include adaptive management to address the cumulative impacts from livestock grazing, invasive weeds, small population size, and climate change by continuing species monitoring, monitoring climate, reducing impacts from grazing when and where detected, and controlling invasive weeds.

Today, the 2014 CA remains in place, and in 2018, the parties added 2,339 ac (947 ha) as new conservation areas for White River beardtongue habitat on Federal and State (SITLA) lands and removed 115 ac (47 ha) of low priority conservation areas (Penstemon Conservation Team 2018b and 2018c, entire). The parties also signed an addendum (Penstemon Conservation Team 2018d, entire) to extend the term of the 2014 CA by an additional 5 years, until 2034, for the Federal, State (SITLA, DNR), and county parties. The private lands in Utah will be released from the 2014 CA when the original term ends in 2029. For the purposes of our analysis, we considered only the 2014 CA protections that are afforded to the beardtongues until 2034. Additional conservation areas under the 2014 CA were designated as ''interim'' and only provide shorter-term protections. However, we did not consider plants in

these interim areas as protected for the purposes of our analysis. We are uncertain of the likelihood of 2014 CA protections continuing beyond 2034 when the CA expires; however, it may be possible to renew the CA with willing partners. As part of the CA, the Service committed to assess the status of the beardtongues in 2028, prior to the expiration of protections on private lands. For additional discussion and details on the 2014 CA and its accomplishments, see our Biological Reports (Service 2021a, pp. 42–45; Service 2021b, pp. 43–48).

Other Regulatory Mechanisms

While the 2014 CA is a voluntary agreement, the State of Utah (SITLA and PLPCO), Uintah County (Utah), and Rio Blanco County (Colorado) used their regulatory authority to implement specific protections as outlined in the 2014 CA (Penstemon Conservation Team 2014, and 2018 a, b, c, entire; Service 2021, pp. 39–43). Utah State law protects the beardtongues on State (SITLA) designated conservation areas and enforces the restrictions identified in the 2014 CA (see title 53C of the Utah Code, at chapter 2, part 2, section 202 (53C–2–202), and the Utah Administrative Code, School and Institutional Trust Lands, at title 850, rule 150 (R850–150)). Uintah County enacted a zoning ordinance to enforce the surface disturbance caps and an avoidance buffer within conservation areas on private lands until 2029 (Penstemon Conservation Team 2014, pp. 28, 35; Uintah County 2018, entire; Penstemon Conservation Team 2019, Appendix A). No other regulatory mechanisms provide protections to the beardtongues on private or State lands in Utah and Colorado.

Other regulatory mechanisms provide protections to Graham's beardtongue and White River beardtongue on Federal (BLM) lands. Graham's and White River beardtongues are BLM sensitive plant species in Utah and Colorado, and are afforded protections at least comparable to (if not greater than) species that are candidates for Federal listing (BLM 2008a, p. 43). In Utah, the BLM Vernal Field Office's resource management plan (RMP), as amended, is the regulatory framework for BLM land management where the beardtongues occur (BLM 2008b, entire). In Colorado, the BLM White River Field Office's RMP, as amended, is the regulatory framework for BLM land management where the beardtongues occur (BLM 1997, entire; BLM 2015, entire). The protections in these RMPs include a 300-ft (91.4-m) avoidance buffer, surface disturbance restrictions on steep slopes, areas that are unavailable for leasing and that have no surface occupancy (NSO) stipulations, and ACECs. For additional detail on all of these regulatory mechanisms, see our Biological Report of future condition (Service 2021b, pp. 46–48).

Oil Shale

Oil shale exploration (*e.g.,* research, exploration, and development) activities occur on State and private lands within the range of the beardtongues. Oil shale exploration and development activities have the potential to destroy beardtongue habitat, plants, and populations. Currently, no exploration activities take place on BLM lands and no plans for commercial-scale development of oil shale exist within the range of both species in Utah and Colorado (BLM 2013, entire; Service 2019d, entire; Service 2021a and b, entire). To date, two oil shale exploration projects have resulted in the loss of 276 ac (112 ha) of Graham's beardtongue pollinator habitat and 246 Graham's beardtongue individuals in Population 13 on State lands (Red Leaf Resources 2013, entire; Red Leaf Resources 2014, entire; The Oil Mining Company 2014, entire; Service 2021a, pp. 45–48).

There are 10,334 ac (4,182 ha) and 1,997 ac (808 ha) of Graham's and White River beardtongue pollinator habitat, respectively, under lease or that have a Utah Division of Oil, Gas and Mining mine permit (includes exploration, small and large mine permits) for oil shale (Service 2021a, pp. 45–48). These areas contain 35 percent (19,476 plants) and 13 percent (4,314 plants) of Graham's and White River beardtongue total populations, respectively. Within oil shale lease and permit areas, conservation areas under the 2014 CA afford protections to 561 Graham's beardtongue plants and 1,678 White River plants with caps on new development and use of an avoidance buffer. The majority of beardtongue habitat within oil shale lease areas has not been impacted by oil shale exploration activities. Aside from the loss of Graham's beardtongue habitat reported above, the disturbance within lease and permit areas is the result of existing roads. We do not anticipate oil shale exploration and development activities to occur within designated conservation areas because of the caps on surface disturbance in the 2014 CA.

Based on past and current exploration and commercial development activities, expert opinion, and the best available information, we consider *exploration* of oil shale from 2020–2030 to be likely on State and private lands with high economic potential within the beardtongues' ranges (Service 2021b, pp. 15–17). However, we consider *commercial development* of oil shale to be about as likely as not on State and private lands, and unlikely on Federal lands within the beardtongues' ranges (Service 2021b, pp. 15–17).

Tar Sands

Tar sands exploration and development activities are occurring on private, State, and BLM lands outside of Graham's and White River beardtongues habitat in the Uinta Basin (Service 2021a, pp. 48–49). Tar sands exploration and development activities have the potential to destroy beardtongue habitat, plants, and populations. To date, tar sand exploration and development activities have not resulted in the loss of beardtongue habitat or plants. One tar sands lease area overlaps the Book Cliffs population of White River beardtongue; however, no White River beardtongue plants or habitat within this lease area have been impacted by tar sand exploration activities. The 2014 CA affords protections to 306 plants and 97 ac (39 ha) within the State lands portion of the lease area and we do not anticipate tar sand exploration and development activities to occur within designated conservation areas because of the caps on surface disturbance. There are no tar sand leases within Graham's beardtongue habitat.

Based on past and current exploration and commercial development activities, expert opinion, and the best available information, we consider exploration of tar sands from 2020–2030 to be likely on State and private lands including the PR Springs South area (Service 2021b, pp. 24–26). However, we consider commercial development of tar sands to be about as likely as not on State and private lands including the PR Springs South area, and unlikely on Federal lands (Service 2021b, pp. 24–28) within the species ranges.

Traditional Oil and Gas

Traditional oil and gas exploration and development activities are occurring on private, State, and BLM lands within Graham's and White River beardtongues habitat (Service 2021a, pp. 49–53). Traditional oil and gas exploration and development activities have the potential to destroy beardtongue habitat, plants, and populations. The best available information indicates that no loss of beardtongue plants from these activities has occurred. However, traditional oil and gas exploration and development activities have resulted in the loss of

less than one percent of the total pollinator habitat area for both species (Federal Energy Regulatory Commission 2012, pp. 24, 25; Lewinsohn 2019, entire; Moore 2019, entire). Approximately 56 percent of Graham's beardtongue pollinator habitat and 39 percent of White River beardtongue pollinator habitat on State and BLM lands are leased for traditional oil and gas development. Within traditional oil and gas lease areas, conservation areas under the 2014 CA afford protections to 34 percent and 42 percent of the Graham's beardtongue habitat and plants under lease, and 36 percent and 32 percent of the White River beardtongue habitat and plants under lease. Overall, traditional oil and gas exploration and development have resulted in a low amount of habitat loss for the two beardtongues to date. The majority of beardtongue pollinator habitat within lease areas is relatively intact and undisturbed.

Based on past and current exploration and commercial development activities, expert opinion, and the best available information, we consider exploration of traditional oil from 2020–2030 to be likely on Federal, State, and private lands within Uintah County in a Mancos shale deposit (the Mancos B play), and do not expect exploration of natural gas to occur, as it is already complete (Service 2021b, pp. 32–33). However, we consider commercial development of natural gas to be likely on Federal, State, and private lands, and commercial development of oil to be unlikely within the species' ranges (Service 2021b, pp. 32–34).

Road Construction and Maintenance

Many unpaved county roads cross through Graham's and White River beardtongue habitat, and most of these roads have existed for decades (Service 2021a, pp. 53–54). Road construction and maintenance activities have the potential to destroy beardtongue habitat, plants, and populations. Plants and populations located near development activities are prone to the effects of dust, weed encroachment, habitat fragmentation, and pollinator disturbance. To date, existing roads and road construction have been the cause of the majority of the loss of beardtongue pollinator habitat. Approximately 1 percent and 1.5 percent of the total pollinator habitat for Graham's and White River beardtongue, respectively, have been lost to road construction. Road construction and paving projects occur infrequently, and we are not aware of other road construction or maintenance projects that are proposed to occur in areas where they would impact Graham's beardtongue or White River beardtongue (Baldwin 2019, entire; Federal Highway Administration (FHWA) 2020, entire; UDOT 2020, entire).

Herbivory

Invertebrates, wildlife, and livestock graze individuals of Graham's and White River beardtongues (Sibul and Yates 2006, p. 9; Dodge and Yates 2010, p. 9; 2011, pp. 9, 12; UNHP 2012, entire; 78 FR 47590, August 6, 2013; 79 FR 46042, August 6, 2014; Penstemon Conservation Team 2015b, entire). Herbivory is primarily due to native grazers rather than livestock (Penstemon Conservation Team 2019a, p. 8). Presumably, beardtongues are adapted to herbivory by native grazers, which may explain why monitored populations continue to remain stable despite occasional high levels of herbivory by native grazers. Most of the Graham's and White River beardtongue populations (99 percent) occur within BLM livestock grazing allotments, except for where the two species occur on private lands (Service 2021a, p. 55). As part of the 2014 CA, the conservation team developed a livestock grazing management plan (Penstemon Conservation Team 2015b, entire), and BLM is monitoring and implementing corrective actions (Service 2021a, pp. 55–56). For example, following a heavy sheep grazing incident at Raven Ridge in Colorado, BLM conducted a site visit with the permittee, reviewed maps of avoidance areas for sheep trailing and bedding, and repaired a fence at the Raven Ridge ACEC boundary. These actions appear to be effective, and sheep grazing has not been detected within the ACEC since 2014 (Service 2021a, p. 56).

Overall, herbivory and livestock grazing are not primary drivers of the beardtongues' current and future condition. The best available information does not indicate that future herbivory impacts would result in any negative population-level impact to the beardtongues. There is the potential for herbivory impacts to increase in populations on non-Federal lands that may be impacted by energy development, because herbivory from native grazers and livestock may increase where available forage is reduced as a result of energy development (Service 2021b, pp. 38–39). We expect future herbivory impacts would be addressed by land management actions and would not increase in beardtongues' populations on Federal lands, where the BLM has committed to take corrective actions. However, there is no commitment to take corrective actions within beardtongue populations affected by development on non-Federal lands if future herbivory impacts increase (Service 2021b, pp. 38–39).

Invasive Weeds and Wildfire

Invasive weeds are present but not extensive across most of the beardtongues' pollinator habitat, and the primary weed is cheatgrass. Invasive weeds have the potential to negatively impact seedling recruitment, plant abundance, and population trends of the beardtongues and other native plants through competitive exclusion, niche displacement, and changes in insect predation. Beardtongue populations with high cheatgrass cover (*i.e.,* introduced annual grasslands greater than 20 percent of habitat area) may be at risk of an altered wildfire regime (Link et al. 2006, p. 116). Based on our review of the existing vegetation types, most beardtongue populations contain low amounts of cheatgrass (less than 5 percent of habitat area), which is consistent with monitoring reports for both species (Service 2021a, pp. 13–20, 57–59; SWCA Environmental Consultants 2014, p. 16). We expect weed levels to remain low in intact beardtongue occupied habitat and increase in disturbed occupied habitat (Service 2021a, pp. 57–59; Service 2021a, pp. 8–11, Appendix B). The effects of invasive weeds may increase in populations that overlap with energy development (Service 2021b, p. 39). As part of the 2014 CA, the conservation team developed a weed management plan. To date, BLM and Uintah County have surveyed for weeds along roads in conservation areas, but no new occurrences of noxious weed species have been detected (Penstemon Conservation Team 2017, p. 1; Penstemon Conservation Team 2018a, p. 1; Sheppard and Wheeler 2020, p. 6).

The best available information does not provide evidence of an altered wildfire regime within the beardtongues' ranges, although decades of fire suppression have increased the risk of high severity, stand-replacing wildfires (BLM 2008b, pp. 3–21). We also considered the exposure and impacts of wildfire to the beardtongues. One recent wildfire (Wolf Den Fire) occurred within the beardtongues' ranges. Overall, the wildfire appeared to have a low or minor negative impact to Graham's beardtongue, while White River beardtongue plants and habitat were not affected (Brunson 2012, entire). To address wildfire, the 2014 CA provides that the Penstemon Conservation Team will coordinate with land managers regarding wildfire and post-wildfire management activities and

mitigation for impacts in conservation areas. For our analysis, we assumed that wildfire frequency and extent in beardtongue populations would generally not change from current levels over the next 10 years.

Small Population Size

Based on results of a PVA, for Graham's and White River beardtongues, we consider small populations to be those that have greater than 10 percent extinction risk (see Service 2021a, pp. 59–62). This threshold is equivalent to Graham's beardtongue populations with fewer than 67 plants and White River beardtongue populations with fewer than 200 individuals. Graham's beardtongue has a lower threshold than White River beardtongue because its populations were more stable over the monitoring period that informed the PVA. Populations in this size category are more prone to extinction from stochastic events than larger populations based on their life-history characteristics and stable demographic pattern (McCaffery 2013b, p. 1). We considered large populations of Graham's and White River beardtongues to be those with low (less than 5 percent) extinction risk, and medium populations to be those with moderate (6–10 percent) extinction risk. Large populations of Graham's beardtongue have more than 130 plants, and large White River beardtongue populations have more than 370 plants (Service 2021a, pp. 59–62; Service 2021a, p. 7, Appendix A). Graham's beardtongue has 12 small populations and 15 large populations distributed across its range, and the small populations comprise less than one percent of all known individuals. White River beardtongue has 6 small populations and 11 large populations distributed across its range, and the small populations comprise less than one percent of all known individuals. As part of the 2014 CA, the Penstemon Conservation Team developed designated conservation areas to protect large populations of Graham's and White River beardtongues as well as moderate and small populations across both species' ranges to support population connectivity. While not a primary driver of either species' current or future condition, we considered the potential cumulative impacts of small population size with other stressors in our analysis.

Climate Change

Climate change has the potential to impact Graham's and White River beardtongues (78 FR 47590, August 6, 2013; 79 FR 46042, August 6, 2014). We do not have a clear understanding of how Graham's and White River beardtongues have responded to precipitation changes, although plant numbers have been documented as remaining fairly stable during drought years. There is also no association between regional precipitation patterns and population demographics for either species (McCaffrey 2013a, p. 16). As part of the 2014 CA, BLM recently installed weather monitoring equipment adjacent to eight monitoring sites to collect local climate data in Range Units 1–5 (McCulley and Hornbeck 2017, p. 2; Penstemon Conservation Team 2019a, p. 8; Sheppard and Wheeler 2020, pp. 17–22). The data collected from weather monitoring can be correlated with demography data to determine basic species responses to climate patterns.

Because we are not aware of a downscaled climate model for the range of Graham's and White River beardtongues, we used climate change data from the Multivariate Adaptive Constructed Analogs (MACA) website. We used two different emission scenarios, a stabilization emission scenario using Representative Concentration Pathway (RCP) 4.5 and a rising greenhouse gas emissions scenario using RPC 8.5 developed by the Intergovernmental Panel on Climate Change. The results of our ''downscaled'' climate evaluation indicate future climate conditions will be warmer in all seasons under both emission scenarios (Lindstrom 2019, entire). The difference in temperature increase between the two scenarios is within 3.2 °F through 2070. Precipitation for all seasons is expected to increase under both scenarios. In order to evaluate a more integrated measure of the combined effect of increased temperature and precipitation levels, we considered a measure of evaporative deficit instead of precipitation alone for our predictions of drought conditions (Lindstrom 2019, entire), using the U.S. Geological Survey (USGS) National Climate Change Viewer. Both scenarios indicate the range of Graham's and White River beardtongues may be drier in the future (through 2070) compared to historical conditions (Service 2021b, pp. 40–41).

Overall, climate change presents substantial uncertainty regarding the future environmental conditions in the range of Graham's and White River beardtongues, but it may place an added stress on the species and its habitat, particularly where other stressors are present. When we considered characteristics that contribute to vulnerability to climate change such as dispersal ability, highly specific habitat requirements, and ability to shift distribution in response to environmental conditions, Graham's and White River beardtongues would likely rank moderate or high on the vulnerability index at the species level (Young et al. 2012, pp. 133–139). Despite characteristics that make the two species vulnerable to climate change, our climate evaluation is too speculative to determine the severity of this stressor to Graham's and White River beardtongues at the population level. Long-lived perennial plants exhibit a range of drought and temperature sensitivities based on physiological, morphological, and inherent genetic variability (Warwell and Shaw 2017, p. 1205), which all contribute to a species' tolerance (Hoover et al. 2015, pp. 7–11). Additional information regarding each species' drought and temperature tolerance is needed for us to be able to assess the species' responses to future climate changes. For our analysis, we assumed that climate conditions would generally not change over the next 10 years from current levels in beardtongue populations, but may contribute to stronger effects of herbivory and invasive weeds to all beardtongue populations. Over a longer timeframe (through 2070), we expect temperatures and drought conditions to increase, but there is substantial uncertainty regarding their impact to the beardtongues.

Stressors Considered but Not Carried Forward

We considered the potential impacts from off-highway vehicle use, disease, and collection. The best available information indicates that these are low-level stressors and do not impact the beardtongues either by themselves, or cumulatively with any other stressors (Service 2021a, p. 63).

Summary of Factors Influencing Viability

Overall, we consider the primary drivers of the status of Graham's beardtongue and White River beardtongue to be energy development and the protections provided by the 2014 CA and other regulatory mechanisms on Federal and State lands. Energy development activities, including oil shale, tar sands, and traditional oil and gas, have collectively had minimal impacts to both species to date but have the greatest potential of the stressors we evaluated for future impacts. Other stressors are not expected to have population- or species-level impacts by themselves but may have the potential for cumulative

impacts on the species when considered together with energy development and other stressors. The protections provided by the 2014 CA and other regulatory mechanisms are expected to reduce the negative effect of energy development on the beardtongues' population resiliency.

Summary of Current Condition

In our Biological Report of current condition (Service 2021a, entire), we describe Graham's and White River beardtongues' viability by characterizing their current condition in terms of the 3Rs. We evaluate resiliency at the population level, and redundancy and representation at the species level. This analysis is described in detail in the Biological Report (Service 2021a, entire), and is briefly summarized here.

We evaluated the current resiliency of each beardtongue population by scoring relevant demographic (population size) and habitat factors for the species for which information is available (Service 2021a, pp. 66–70). For population size, we incorporated two factors, population extinction risk (based on a PVA) and the presence of high-density clusters of plants within populations, into our calculation. For habitat, we incorporated three factors, pollinator habitat quality (measured as percent nonnative plant cover), pollinator habitat area, and pollinator habitat loss, into our calculation. We included pollinator habitat area because this factor is associated with plant abundance and biodiversity (Krauss et al. 2004, entire) and may change in a predictable way to estimate future population size. Each population's overall resiliency score is the average of all individual factor scores, which translates to an overall current condition category of low, moderate, or good.

Graham's Beardtongue

Fourteen Graham's beardtongue populations are in good current condition (*i.e.,* the most resilient) due to their large population size and habitat quality ranks (Service 2021a, pp. 68–69). These factors likely provide Graham's beardtongue the ability to withstand stochastic events such as drought or wildfire. The remaining 13 populations are in moderate condition based on the habitat and demographic factors contributing to resiliency (Service 2021a, pp. 68–69). The moderate condition of these populations may result in a lower ability to withstand stochastic events than the populations in good condition. The low levels of habitat loss to date have not changed the overall current condition of any population. Only one population (population 11) had a reduction in the overall condition because of higher weed presence; the remaining populations retain the same condition as they did historically (Service 2021a, pp. 68–69).

Unlike many other narrow endemic species, the redundancy of Graham's beardtongue is quite high despite its limited geographical range. The species' 27 populations are spread across the Uinta Basin on different topographic features, which likely provides the ability to withstand more localized catastrophic events (*e.g.,* wildfire), and may provide a limited ability to withstand rangewide catastrophic events (*e.g.,* drought) (Service 2021a, pp. 70–72). Maintaining redundancy to reduce the risk from catastrophic events is dependent upon maintaining sufficiently resilient populations of Graham's beardtongue in topographically diverse habitat conditions.

We do not have meaningful information on the genetic diversity of Graham's beardtongue. Therefore, we considered other types of representative diversity, such as population size and ecological settings, that could indicate some ability to adapt to change within the species' range (Service 2021a, pp. 72–77). Graham's beardtongue has 15 large populations distributed across its range with at least 1 large population within each of the five range units. There are three medium populations within the two western-most range units; the remaining nine populations are small. We assume the 15 large populations contain the majority of genetic variation within the total population because they contain 99.5 percent of all individuals (Service 2021a, p. 73). Graham's beardtongue populations and metapopulations occur in a high diversity of ecological settings, suggesting a high level of genetic variation within each range unit (Service 2021a, p. 76). In addition, the species exhibits a gradient of morphological and phenological differences across its range. Preserving the species' representation requires maintaining medium and large populations, connectivity between populations, and a diversity of ecological settings across its range. The current distribution is the same as the historical distribution, and the best available information does not indicate that a reduction in genetic diversity or connectivity among populations has occurred.

Overall, Graham's beardtongue exhibits high levels of resiliency, redundancy, and representation that have allowed populations to persist throughout the species' range. The species contains a high number of populations in good or moderate condition, and levels of redundancy and representation are similar to its historical condition. Graham's beardtongue is stable despite localized weed encroachment and some loss of occupied habitat and pollinator habitat. The current condition of Graham's beardtongue populations is a direct result of the low levels of habitat loss and degradation to date and habitat protections afforded to the species under the 2014 CA. For further explanation of our analysis of the current condition of Graham's beardtongue, see our Biological Report (Service 2021a, pp. 63–80).

White River Beardtongue

Seven White River beardtongue populations are in good current condition (*i.e.,* the most resilient) due to their large population size and habitat factors (Service 2021a, pp. 68–70). These factors likely provide White River beardtongue the ability to withstand stochastic events such as drought or wildfire. There are nine populations in moderate condition based on the habitat factors (habitat area and quality) contributing to resiliency (Service 2021a, pp. 68–70). The moderate condition of these populations may result in a lower ability to withstand stochastic events compared to populations in good condition. One population (Population 8) is in low condition and is the least likely to withstand stochastic events (Service 2021a, pp. 68–70).

The low overall level of pollinator habitat loss for all populations to date does not change the overall current condition of any population because habitat loss does not exceed the low habitat loss condition threshold of five percent habitat loss, and effects to populations remain small and localized. Two populations (Populations 8 and 13) had a reduction in their overall condition because of higher weed presence; the remaining 15 populations retain the same condition as they did historically (Service 2021a, pp. 68–70).

Unlike many other narrow endemic species, the redundancy of White River beardtongue is fairly high despite its limited geographical range (Service 2021a, pp. 70–72). The species includes 17 populations spread across the Uinta Basin on different topographic features, which likely provides the ability to withstand more localized catastrophic events (*e.g.,* wildfire) and may provide a limited ability to withstand rangewide catastrophic events (*e.g.,* drought).

Maintaining redundancy to reduce the risk of catastrophic events is dependent upon maintaining sufficiently resilient populations of White River beardtongue in topographically diverse habitat conditions.

We considered population size and ecological settings that could indicate some ability to adapt to change within the species' range (Service 2021a, pp. 72–77). White River beardtongue has 11 large populations distributed across its range with at least 1 large population within each of the five range units. The remaining six populations are small. We assume these 11 large populations contain the majority of genetic variation within the total population, because they contain 99.7 percent of all individuals (Service 2021a, p. 76). There is a high diversity of ecological settings within White River beardtongue metapopulations, suggesting a high level of genetic variation within each range unit. One White River beardtongue range unit has a distinctly different composition of vegetation types than the other range units, which we consider a different ecological setting for the species (Service 2021a, p. 76). We assume this is an indication that this range unit has a slightly different genetic composition than the other range units. The preliminary genetic information and opinions from our expert panel support this assumption (Stevens 2019, attachments a, b, c; Service 2017a, p. 4). Preserving the species' representation requires maintaining large populations, connectivity between populations, and a diversity of ecological settings across its range. The current distribution is the same as the historical distribution, and the best available information does not indicate that a reduction in genetic diversity or connectivity among populations has occurred.

Overall, White River beardtongue exhibits high levels of resiliency, redundancy, and representation, which have allowed populations to persist throughout the species' range. The species contains a high number of populations in good or moderate condition, and levels of redundancy and representation are similar to its historical condition. White River beardtongue is stable despite localized weed encroachment and some loss of pollinator habitat. The current condition of White River beardtongue populations is a direct result of the low levels of habitat loss and degradation to date and habitat protections afforded to the species under the 2014 CA. For further explanation of our analysis of the current condition of White River beardtongue, see our Biological Report (Service 2021a, pp. 63–80).

Summary of Future Condition

Using the 3Rs, we evaluated the future viability of the beardtongues based on the presence of multiple (redundancy), self-sustaining (resiliency) populations distributed across the range of the species, and their contributions to adaptive capacity (representation) in the face of changing environmental conditions. We relied on our characterization of each species' current condition, stressors, and effects of stressors as the baseline from which to evaluate future changes to those factors considered important to the beardtongues (Service 2021a, entire). Our analysis of the projected future condition of Graham's and White River beardtongues is described in detail in our Biological Report of future condition (Service 2021b, entire), and is briefly summarized here.

Based on input received from Federal and State agencies, private industry, and the best available information, we developed two plausible future scenarios—moderate and high energy development (Service 2021b, pp. 48–56). We used reliable projections of future events and the future locations of stressors based on the best available information and expert opinion. Published literature evaluates energy development at a coarser scale (*e.g.,* the Uintah Basin, State of Utah, or county-level) than what we needed for our analysis within the beardtongues' ranges. Therefore, we relied on expert opinion to evaluate energy development specifically within the ranges of the two species and assign likelihoods to future exploration and development activities (Service 2021b, pp. 12, 13).

Based on this information, our two scenarios considered impacts to the beardtongues through 2030, because we have sufficient information to project out to 10 years for energy development (oil shale, tar sands, and oil and gas development), which is the primary future stressor for the beardtongues (Service 2021b, p. 49). Beyond 10 years, there is too much uncertainty about the fluctuating market price of oil and gas, the possibility of future technological advances that could lower extraction costs and favor certain industries, and the results of planned oil exploration to project the level or distribution of energy development within the beardtongues' populations and ranges, such that projections would become speculative (Service 2019, entire; Service 2020, entire). Expert panel likelihood estimates and the best available information from published literature and technical reports informed our 10-year energy development (oil shale, tar sands, and oil and gas development) projection timeframe. Our 10-year energy development timeframe is generally consistent with long-term economic forecasts for oil shale, tar sands, and traditional oil and gas that are based on the market price of oil and natural gas (Service 2021b, pp. 17, 25, 33, 34). In addition, future oil exploration and development within the beardtongues' ranges will depend of the results of planned exploration within Uintah County (Service 2021b, pp. 32—35). We note that we do have certainty through 2034 that the protections of the 2014 CA will remain in place, which will limit where energy development could occur. For more information on how these projection timeframes relate to our evaluation of the ''foreseeable future'', see *Consideration of Foreseeable Future* below.

In the locations where energy stressors occurred for the two scenarios, our analysis included the following assumptions: Commercial development activities for oil shale and tar sands will occur in the next 10 years on non-Federal (private and state) lands within each forecast; and a total loss of plants and habitat will occur where oil shale and tar sands development are projected (Service 2021b, pp. 15–31; 49–56). These assumptions allowed us to evaluate potential worst-case impacts from energy development in combination with other stressors, to bracket the full range of impacts to the beardtongues that may occur, because actual future impacts may range anywhere from their current condition to the future scenarios evaluated here, or may fall in between. We did not develop a scenario that considered ''exploration-only'' activities for oil shale and tar sands, with a smaller surface disturbance extent, even though this would also be a plausible future forecast for oil shale and tar sands, because the impacts under an exploration-only scenario would fall in between the current condition and the energy development scenarios we developed. Our evaluation of effects from energy development accounted for the protections afforded to the beardtongues from the 2014 CA that are in place through 2034.

For the two future scenarios, we forecasted the species' biological condition based on conservation efforts and the following stressors: Oil shale, tar sands, and traditional oil and gas exploration and development activities; road construction and maintenance; herbivory; invasive weeds; small

population size; and climate change. Our future scenarios varied based on two forecasts for oil shale (moderate, high). For each of the other stressors (tar sands, traditional oil and gas, road construction and maintenance, herbivory, invasive weeds, small population size, and climate change) we developed only one future forecast (these forecasts were used in both future scenarios) because their future, plausible extents are not expected to vary much within the beardtongues' ranges independent of the oil shale stressor (Service 2021b, pp. 49–56).

In the moderate energy development scenario (Scenario 1), we projected that oil shale exploration and commercial development would occur on lands identified as having a high potential for both activities (Service 2021b, pp. 49–52). The effects of herbivory and invasive weeds may increase in populations that overlap with energy development. Climate change may increase the effects from herbivory and invasive weeds to all beardtongue populations. In the high energy development scenario (Scenario 2), we projected that oil shale exploration and commercial development would occur over a larger area that included the same lands as the moderate scenario, plus other lands identified as likely or about as likely as not to support these activities (Service 2021b, pp. 52–55). The potential effects of the other stressors to all beardtongue populations remained the same as evaluated for the moderate energy development scenario.

Under each of these future scenarios, we assessed future resiliency by evaluating relevant habitat and demographic factors to calculate an overall condition score for each plant population. We evaluated population size, habitat area, habitat quality, and habitat loss to project the future resiliency of each population. Based on the results of these evaluations, we rated population condition as good, moderate, low, or extirpated. To assess future redundancy, we evaluated the projected number and distribution of populations within the species' range relative to the current condition. To assess future representation, we evaluated the projected demographic (population size) and ecological (ecological settings) surrogates of genetic diversity relative to the current condition. For more detailed information on our methodology for evaluating future conditions, see the Biological Report (Service 2021b, pp. 49–56).

Graham's Beardtongue

Under the moderate energy development scenario, oil shale and traditional oil and gas are the main stressors for Graham's beardtongue, and these stressors are projected to result in loss of individual plants and habitat in the center of the species' range (Service 2021b, Figure 11, pp. 50, 56). In this scenario, there is a projected loss of 34 percent of the total number of plants from energy development, with a remaining total population size of 37,350 individuals in 24 populations (Service 2021b, p. 57). Remaining occupied habitat and pollinator habitat are projected to be 7,642 ac (3,093 ha) and 72,455 ac (29,321 ha), respectively. The main stressors result in the extirpation of three populations and a decline in the condition of four populations compared to their current condition. The current population condition is maintained in the other 20 populations. The species continues to occupy the extent of its current range, and all five range units continue to support populations in good or moderate condition. Fourteen populations in good and moderate condition are large in size and have a low extinction risk (Service 2021b, pp. 57–58).

Despite the extirpation of some populations under the moderate energy development scenario, levels of redundancy remain high, with Graham's beardtongue maintaining 24 populations (Service 2021b, p. 60). Our evaluation of representation under this scenario indicates that Graham's beardtongue maintains a level of ecological diversity within the 24 remaining populations that is similar to its current condition and should have the adaptive capacity to tolerate projected, future climate and habitat conditions (Service 2021b, p. 60). The best available information does not indicate that the projected loss of the three Graham's beardtongue populations and projected plant loss in other populations would result in significant impacts to Graham's beardtongue's representation.

Under the high energy development scenario, the main stressors remain the same for Graham's beardtongue, but oil shale impacts result in more extensive plant and habitat loss in the center of the species' range than in the moderate energy development scenario (Service 2021b, Figure 13, pp. 53, 60–62). In this scenario, there is a projected loss of 45 percent of the total number of plants from energy development, with a remaining total population size of 30,794 individuals in 24 populations. Remaining occupied habitat and pollinator habitat are projected to be 6,037 ac (2,443 ha) and 63,580 ac (25,730 ha), respectively. The main stressors result in the extirpation of three populations and a decline in the condition of six populations compared to their current condition. The current population condition is maintained in the other 18 populations. Fourteen populations in good and moderate condition are large in size and have a low extinction risk. The species continues to occupy the extent of its current range, and all five range units continue to support populations in good or moderate condition (Service 2021b, pp. 60–62).

Despite the extirpation of populations, levels of redundancy remain high with Graham's beardtongue maintaining 24 populations (Service 2021b, p. 64). Our evaluation of representation indicates that Graham's beardtongue maintains a level of ecological diversity within the 24 remaining populations that is similar to its current condition and should have the adaptive capacity to tolerate future climate and habitat conditions (Service 2021b, p. 64). The best available information does not indicate that the projected loss of the three Graham's beardtongue populations and projected plant loss in other populations would result in significant impacts to Graham's beardtongues' representation.

White River Beardtongue

Under the moderate energy development scenario, oil shale is the main stressor for White River beardtongue, and this stressor is projected to result in loss of individual plants and habitat in the center of the species' range (Service 2021b, Figure 12, pp. 51, 57–59). In this scenario, there is a projected loss of 1 percent of the total number of plants from energy development, with a remaining total population size of 29,686 individuals in 16 remaining populations. Remaining occupied habitat and pollinator habitat are projected to be 3,218 ac (1,302 ha) and 26,959 ac (10,910 ha), respectively (Service 2021b, pp. 57–59). The main stressor results in the extirpation of one population and a decline in the condition of one population compared to their current condition. The current population condition is maintained in the other 15 populations. The species continues to occupy the extent of its current range, and all five range units continue to support populations in good or moderate condition. Eleven populations in good and moderate condition are large in size and have a low extinction risk (Service 2021b, pp. 57–59).

Despite the extirpation of one population under the moderate energy development scenario, levels of redundancy remain high with White

River beardtongue maintaining 16 populations (Service 2021b, p. 60). Our evaluation of representation indicates that White River beardtongue maintains a level of ecological diversity within the 16 remaining populations that is similar to its current condition and should have the adaptive capacity to tolerate future climate and habitat conditions (Service 2021b, p. 60). The best available information does not indicate that the projected loss of the one White River beardtongue population and projected plant loss in other populations would result in significant impacts to White River beardtongue's representation.

Under the high energy development scenario, the main stressor remains the same for White River beardtongue, but oil shale impacts result in more extensive plant and habitat loss in the center of the species' range than in the moderate energy development scenario (Service 2021b, Figure 14, pp. 54, 61–63). In this scenario, there is a projected loss of 24 percent of the total population from energy development, with a remaining total population size of 22,695 individuals in 15 populations. Remaining occupied habitat and pollinator habitat are projected to be 2,317 ac (938 ha) and 20,099 ac (8,134 ha), respectively (Service 2021b, pp. 61–63). The main stressor results in the extirpation of two populations and a decline in the condition of two populations compared to their current condition. The current population condition is maintained in the other 13 populations. Nine populations in good and moderate condition are large in size and have a low extinction risk. The species continues to occupy the extent of its current range, and all five range units continue to support populations in good or moderate condition (Service 2021b, pp. 61–63).

Despite the extirpation of populations, levels of redundancy remain high with White River beardtongue maintaining 15 populations (Service 2021b, p. 64). Our evaluation of representation indicates that White River beardtongue maintains a level of ecological diversity within the 15 remaining populations that is similar to its current condition and should have the adaptive capacity to tolerate future climate and habitat conditions (Service 2021b, p. 64). The best available information does not indicate that the projected loss of the two White River beardtongue populations and projected plant loss in other populations would result in significant impacts to White River beardtongue's representation.

The 2014 CA provides protections for the beardtongues on Federal and State lands until 2034. During this time, the beardtongues are afforded the same level of protections on Federal and State lands within designated conservation areas. The 2014 CA identifies 42,993 ac (17,399 ha) of designated conservation areas that protect 41 percent of the Graham's beardtongue population in 13 populations, and 66 percent of the White River beardtongue population in 11 populations (Service 2021b, pp. 43–46). Within designated conservation areas, protections include an avoidance buffer of 300 ft (91.4 m) between disturbance and beardtongue plants, as well as surface disturbance caps to restrict development. Surface disturbance caps would allow a limited amount of new construction for roads and traditional oil and gas development but would prohibit future oil shale and tar sand exploration and development (Service 2021b, pp. 43–46).

The beardtongues are also afforded protections on Federal lands outside of designated conservation areas, including a 300-ft (91.4-m) avoidance buffer, surface disturbance restrictions on steep slopes, areas that are unavailable for leasing or have NSO stipulations, and designated ACECs (Service 2021b, pp. 47–48). In total, the 2014 CA designated conservation areas and other conservation measures on Federal lands provide protections to 51 percent and 76 percent of the Graham's beardtongue and White River beardtongue total population, respectively (Service 2021b, p. 48).

Determination of Species Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Since the publication of the August 6, 2013, proposed listing rule (78 FR 47590), and the subsequent reinstatement of that proposed rule following litigation, we prepared a comprehensive assessment of the current and future status of Graham's beardtongue and White River beardtongue as presented in the Biological Reports (Service 2021a, entire; 2021b, entire). The Biological Reports reexamined the threats identified in the 2013 proposed listing rule (energy exploration and development, as well as the cumulative impacts of livestock grazing, invasive weeds, small populations sizes, and climate change) using concepts from the Service's SSA framework (Service 2016, entire; Smith et al. 2018, entire). The Biological Reports also incorporate new information into our analysis that has become available since 2013, including updated monitoring information and the final 2014 CA and its 2018 addendum.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Graham's and White River beardtongues, including: Energy exploration and development: Oil shale, tar sands, and traditional oil and gas drilling (Factor A); road construction (Factor A); herbivory (Factor C); invasive weeds (Factor A); small population size (Factor E); and climate change (Factors A and E). We also evaluated how existing regulatory mechanisms (Factor D) and other conservation measures (primarily the 2014 CA and 2018 addendum) may lessen the impacts of these stressors. The best available information does not indicate that overutilization (Factor B) is a threat to either beardtongue species.

Consideration of Cumulative Effects

Threats can work in concert with one another to cumulatively create conditions that may impact the Graham's and White River beardtongues or their habitat beyond the scope of each individual threat. We note that by using concepts from the SSA framework to guide our analysis of the scientific information documented in the Biological Reports, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors

that may be influencing the species, including threats and conservation efforts. Because our analysis considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Consideration of Foreseeable Future

In considering the foreseeable future for Graham's beardtongue and White River beardtongue, we considered the available data regarding the factors that may influence both species into the future, including stressors, and conservation efforts or regulatory mechanisms that may provide protections. The primary driver of both species' condition into the future is energy development. We are able to make reliable predictions about the range of plausible future impacts of oil shale, tar sands, and traditional oil and gas through approximately 2030. Beyond 2030, based on input from experts, the impacts of energy development become too speculative to predict. Other stressors, including roads, livestock grazing, invasive weeds, and small population size, exert a cumulative effect on the beardtongues where they occur with energy development, and, therefore, we are similarly able to reliably predict their impacts on the species through approximately 2030. Climate change has the potential to exacerbate the effect of other stressors, including livestock grazing and invasive weeds, where they are present on the landscape. We have information on climate change, including projected changes in temperature, precipitation, and evaporative deficit out to 2070. However, we are not able to make reliable predictions about the species' responses to these changes out to 2070, since the species' expected responses to these variables are uncertain, and will depend on the presence and impacts of other stressors.

We also have information on various timescales to make reliable predictions about future protections that may be in place for both Graham's and White River beardtongues. The 2014 CA provides protections through designated conservation areas on Federal and State lands through 2034. Regulatory mechanisms are in place to provide for the State conservation areas (Utah Code 53C–2–202 and Utah Administrative Code R850–150) through 2034. Federal regulatory mechanisms, including a BLM sensitive species designation, and BLM RMP designations and stipulations, provide protections for the species through at least 2038. The 2014 CA conservation areas on private lands are expected to expire sooner, in 2029. A Uintah County Ordinance that provides for those areas also expires in 2029. Therefore, we did not include these private land conservation areas in our analysis of future conditions.

Overall, the primary drivers of the future status of Graham's beardtongue and White River beardtongue are energy development and the protections provided by the 2014 CA and other regulatory mechanisms on Federal and State lands. We have information to make reliable predictions about these factors, and the species' responses to them, through: 2030 for the threat of energy development, 2034 for the protections of the 2014 CA on Federal and State conservation areas, and 2038 for regulatory mechanisms on BLM lands. Therefore, the foreseeable future for this determination ranges from approximately 2030 to 2034, for the stressors and 2014 CA protections included in our future scenarios, to approximately 2038 for BLM regulatory mechanisms.

Graham's Beardtongue: Determination of Status Throughout All of Its Range

Our evaluation of the current condition of Graham's beardtongue found that there are currently tens of thousands of individual plants distributed across many populations that have good or moderate resilience to stochastic events. The species currently has a sufficient level of redundancy and representation to withstand catastrophic events and adapt to changes, with populations distributed across five range units. While some stressors have impacted individuals in localized areas, none are currently having population-level impacts individually or cumulatively. Therefore, we find that the species is not in danger of extinction throughout all of its range.

Our evaluation of the projected future condition of Graham's beardtongue found that there is very high uncertainty about the future likelihood of oil shale development. The future condition of Graham's beardtongue in 2030 may range anywhere from its current condition to the impacts projected in the high energy development scenario. However, the impacts projected under the high energy development scenario represent a worst-case scenario, which we expect is less likely to occur than the impacts projected under the moderate energy development scenario, or a continuation of current conditions. Although unlikely, even if we assume the high energy development scenario were to occur, the impacts of the stressors on Graham's beardtongue would be limited to three range units. Those three impacted range units would still have several populations in good or moderate condition, and over 30,000 individual plants would remain. In this scenario, Graham's beardtongue would also retain over 6,000 ac (2,428 ha) of occupied habitat and 63,000 ac (25,495 ha) of pollinator habitat. The 2014 CA would cap the total level of habitat that could be impacted within the foreseeable future. Therefore, even in this worst-case scenario, we anticipate that Graham's beardtongue would retain sufficient levels of resiliency, redundancy, and representation in the foreseeable future. Thus, after assessing the best available information, we conclude that the Graham's beardtongue is not in danger of extinction throughout all of its range nor is it likely to become so in the foreseeable future.

Graham's Beardtongue: Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the Graham's beardtongue is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the Graham's beardtongue, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened. For the Graham's beardtongue, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We

examined the following threats: Energy development (oil shale, tar sands, and traditional oil and gas drilling) and the additional cumulative impacts of road construction, herbivory, invasive weeds, small population size, and climate change with energy development (Service 2021a, entire; 2021b, entire). We acknowledge that there are three range units (Units 2, 3, and 4) with potentially greater levels of impacts projected from oil shale in the foreseeable future, although the worst-case impacts of the high energy development scenario are less likely to occur than the impacts under the moderate energy development scenario or a continuation of current conditions. However, even if these worst-case projected impacts were to occur in Range Units 2, 3, and 4, several populations would remain in good or moderate condition in Range Units 2 and 3, and the one population in Range Unit 4 would remain in good condition. Based on the resiliency of these remaining populations, and their spread across these range units, we expect that adequate levels of resiliency, redundancy, and representation would remain in these units to protect again stochastic and catastrophic events and to adapt to future changes, and so, this portion of the range would not meet the definition of endangered or threatened. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

White River Beardtongue: Determination of Status Throughout All of Its Range

Our evaluation of the current condition of White River beardtongue found that there are currently nearly 30,000 individual plants distributed across many populations that have good or moderate resilience to stochastic events. The species currently has a sufficient level of redundancy and representation to withstand catastrophic events and adapt to changes, with populations distributed across five range units. In addition, the recent discovery of a new population in the Book Cliffs has expanded the species' known range. While some stressors have impacted individuals and habitat in localized areas, none are currently having population-level impacts. Therefore, we find that the species is not in danger of extinction throughout all of its range.

Our evaluation of the projected future condition of White River beardtongue found that there is very high uncertainty around the future of oil shale development. The future condition of White River beardtongue in 2030 may range anywhere from its current condition, to the impacts projected in the high energy development scenario. However, the impacts projected under the high energy development scenario represent a worst-case scenario, which we expect is less likely to occur than the impacts projected under the moderate energy development scenario, or a continuation of current conditions. Although unlikely, even if we assume the high energy development scenario were to occur, the impacts of the stressors on White River beardtongue are projected to be limited. Under this worst-case scenario, we expect that White River beardtongue would retain over 75 percent of individual plants and maintain the resiliency of the large populations. The 2014 CA is expected to protect the majority (66 percent) of plants across 11 populations into the foreseeable future. We also expect sufficient levels of redundancy and representation to remain across the range units, even though 2 out of 17 populations could be lost. Therefore, even in this worst-case scenario, we anticipate that White River beardtongue would retain sufficient levels of resiliency, redundancy, and representation in the foreseeable future. Thus, after assessing the best available information, we conclude that White River beardtongue is not in danger of extinction throughout all of its range nor is it likely to become so in the foreseeable future.

White River Beardtongue: Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the White River beardtongue is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the White River beardtongue, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened. For the White River beardtongue, we considered whether the stressors are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following stressors: Energy development (oil shale, tar sands, and traditional oil and gas drilling) and the additional cumulative impacts of road construction, herbivory, invasive weeds, small population size, and climate change with energy development (Service 2021a, entire; 2021b, entire). All of these potential stressors are relatively evenly distributed geographically throughout the range of the White River beardtongue. Our analysis projected that small areas of disturbance will occur within most range units but are expected to be spread throughout the range. We found no concentration of stressors in any portion of the White River beardtongue's range at a biologically meaningful scale. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017).

Determination of Status

We have reviewed the best available scientific and commercial information

regarding the past, present, and future threats to the Graham's beardtongue and White River beardtongue, and we have determined that these species do not meet the definition of an ''endangered species'' or a ''threatened species'' in accordance with sections 3(6) and 3(20) of the Act. Because of this determination, we are withdrawing our August 6, 2013, proposed rule to list the Graham's beardtongue and White River beardtongue as threatened species (78 FR 47590). Accordingly, we are also withdrawing our August 6, 2013, proposed rule to designate critical habitat for the species (78 FR 47832).

References Cited

A complete list of references cited in this document and the Graham's and White River beardtongues Biological Reports are available on the internet at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2019–0029 and upon request from the Utah Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Utah Ecological Services Office and the Mountain-Prairie Regional Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–00485 Filed 1–12–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 87, No. 9

Thursday, January 13, 2022

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

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) 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 these information collections are best assured of having their full effect if received by February 14, 2022. 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.* You may 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.

National Agricultural Statistics Service (NASS)

Title: Aquaculture Surveys—Substantive Change.

OMB Control Number: 0535–0150.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The National Agricultural Statistics Service (NASS) is seeking approval for this substantive change request to the aquaculture surveys information collection request. NASS seeks approval to conduct a Pennsylvania Aquaculture Census that is funded by a cooperative agreement between the National Agricultural Statistics Service (USDA–NASS) and the Pennsylvania Department of Agriculture (PDA). NASS will conduct a census of the Pennsylvania aquaculture producers and provide Pennsylvania Department of Agriculture and the public with a summary report of all sales specifying the amount or weight of each species (except trout) sold and gross receipts. Pennsylvania trout sales data are accounted for in the NASS' Trout Production report. Additional burden is estimated at 64 hours over 175 respondents. One response per year is needed for Pennsylvania's aquaculture census.

Need and Use of the Information: Act 98 of the 1998 Pennsylvania General Assembly Amended Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes mentions the Pennsylvania Department of Agriculture cooperates with NASS for a survey of Pennsylvania's aquacultural industry.

Description of Respondents: Farms: Individuals or households.

Number of Respondents: 2,450.

Frequency of Responses: Once per year.

Total Burden Hours: 796.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–00484 Filed 1–12–22; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of web briefing.

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 South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold web briefings to hear testimony on Civil Asset Forfeiture on the following dates: Thursday, February 3, 2022, at 12:00 p.m. ET and Thursday, February 10, 2022, at 12:00 p.m. ET.

DATES: The meetings will take place via WebEx on Thursday, February 3, 2022, at 12:00 p.m. ET and Thursday, February 10, 2022, at 12:00 p.m. ET.

ADDRESSES:

Meeting Link (Audio/Visual): https://tinyurl.com/3zz3npu5.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2761 517 9996.

FOR FURTHER INFORMATION CONTACT: Barbara de La Viez, DFO, at *bdelaviez@usccr.gov* or (202) 376–8473.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and

hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *ero@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above email or street address.

Agenda

I. Roll Call
II. Opening Statement
III. Briefing
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–00493 Filed 1–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–833]

Raw Honey From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist regarding all imports of raw honey from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable January 13, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill or Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3518 or (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 2021, Commerce published its preliminary determination in the less-than-fair-value investigation of raw honey from Vietnam.[1] On December 3, 2021, the American Honey Producers Association and the Sioux Honey Association (collectively, the petitioners) filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of raw honey from Vietnam.[2]

In accordance with 19 CFR 351.206(c)(1), when a critical circumstances allegation is filed 30 days or more before the scheduled date of the final determination, Commerce will issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Because the critical circumstances allegation in this case was submitted after the preliminary determination was published, Commerce must issue its preliminary findings of critical circumstances no later than 30 days after the allegation was filed.[3]

Legal Framework

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been ''massive,'' Commerce normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, ''{i}n general, unless the imports during the 'relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.'' Section 351.206(i) of Commerce's regulations defines ''relatively short period'' generally as the period starting on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later. This section of the regulations further provides that, if Commerce ''finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,'' then Commerce may consider a period of not less than three months from that earlier time.

Critical Circumstances Allegation

In its allegation, the petitioners claim there is a history of dumping and material injury based on Commerce's issuance of the antidumping duty orders on honey from the People's Republic of China (China) and Argentina, the countervailing duty order on honey from Argentina, and the final results of its expedited third sunset review of the antidumping duty order on honey from China (which remains in place today).[4] Additionally, the petitioners claim that although the scope for the previously mentioned orders was broader as each covered processed honey, the scope of the orders did also cover raw honey which is subject to the scope of the instant investigation. Finally, the petitioners contend that although the antidumping and countervailing duty orders on honey from Argentina were

[1] *See Raw Honey From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 66526 (November 23, 2021) (*Preliminary Determination*).

[2] *See* Petitioners' Letter, ''Less-Than-Fair-Value Investigation of Raw Honey from the Socialist Republic of Vietnam—Petitioners' Allegation of Critical Circumstances,'' dated December 3, 2021 (Petitioners' Allegation).

[3] *See* 19 CFR 351.206(c)(2)(ii).

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey From the People's Republic of China,* 66 FR63670 (December 10, 2001); *see also Notice of Antidumping Duty Order: Honey from Argentina,* 66 FR 63672 (December 10, 2001); *Notice of Countervailing Duty Order: Honey from Argentina,* 66 FR 63673 (December 10, 2001); and *Honey from the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 83 FR 10432 (March 9, 2018).

revoked in December 2021, the fact that the orders were in effect for over a decade demonstrates a history of dumping and material injury.[5]

Furthermore, the petitioners state that based on the dumping margins assigned by Commerce upon initiating its investigation and the *Preliminary Determination* (*i.e.,* 47.56–138.23 and 410.93–413.99 percent, respectively), importers knew or should have known that imports of raw honey from Vietnam was being sold at less than fair value (LTFV) and there was likely material injury. The petitioners further state that these margins exceed the 25 and 15 percent thresholds established for export price (EP) and constructed export price (CEP), respectively.[6] Additionally, the petitioners also contend that the U.S. International Trade Commission affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of raw honey from Argentina, Brazil, India, Vietnam, and Ukraine is sufficient to impute knowledge of the likelihood of material injury.[7]

Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), the petitioners submitted import statistics for the HTS numbers included in the scope for the period between December 2020 and September 2021 as evidence of massive imports of raw honey from Vietnam during a relatively short period.[8]

Analysis

Commerce's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to Commerce, such as: (1) The evidence presented in the petitioners' allegation; (2) import statistics released by the International Trade Commission (ITC); and (3) shipment information submitted to Commerce by the respondents selected for individual examination.[9] Therefore, as further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) The evidence presented in Petitioners' Allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

Section 733(e)(1)(A)(i) of the Act: History of Dumping and Material Injury by Reason of Dumped Imports in the United States or Elsewhere of the Subject Merchandise

In determining whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous antidumping duty (AD) orders on subject merchandise from the country in question in the United States and current AD orders imposed by another country with regard to imports of the same merchandise.[10] While the petitioners identified such proceedings with respect to Argentine and Chinese honey, the petitioners did not identify, nor are is Commerce aware of, an AD order in any country on raw honey from Vietnam, and there has been no previous U.S. AD order on raw honey from Vietnam. Therefore, Commerce preliminarily finds that there is no history of dumping of the subject merchandise; thus, this criterion is not met.

Section 733(e)(1)(A)(ii): The Importer Knew or Should Have Known That the Exporter Was Selling at Less Than Fair Value and That There Was Likely To Be Material Injury

In determining whether importers knew or should have known that exporters were selling the subject merchandise at LTFV pursuant section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including dumping margins alleged in the petition.[11] Commerce has

[5] *See Honey from Argentina; Final Results of Antidumping and Countervailing Duty Changed Circumstances reviews; Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 77029 (December 31, 2012).

[6] *See, e.g., Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049 (January 14, 2009), and accompanying Issues and Decision Memorandum (IDM) at 42–44 (acknowledging that the existence of dumping margins in excess of 25 percent can indicate importers' knowledge of dumping and the likelihood of resultant material injury); *see also Certain Uncoated Paper From Australia: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 80 FR 51783 (August 26, 2015), and accompanying IDM at 15 (stating that the ''Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.''); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea,* 77 FR 17413 (March 26, 2012), and accompanying IDM at the ''Critical Circumstances'' Section (''The final dumping margin calculated for LG exceeds the threshold sufficient to impute knowledge of dumping (*i.e.,* 15 percent for CEP sales, which are the majority of the sales on which the calculation is based).'').

[7] *See Raw Honey from Argentina, Brazil, India, Ukraine, and Vietnam,* Investigation Nos. 731–TA–1560–1564 (Preliminary), 86 FR 30980 (June 10, 2021) (ITC Preliminary Determination).

[8] *See* Petitioners' Allegation at Attachment 1.

[9] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970, 31972–73 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049, 2052–53 (January 14, 2009) (*Graphite Electrodes*).

[10] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970, 31972–73 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049, 2052–53 (January 14, 2009).

[11] *See, e.g., Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances,* 80 FR 68504 (November 5, 2015) (*CORE Critical Circumstances Prelim*); *Certain Corrosion Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 81 FR 35329 (June 2, 2016) (*CORE India Final*); *Certain Corrosion Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* in Part, 81 FR 35320 (June 2, 2016) (*CORE Italy Final*); *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 35303 (June 2, 2016) (*CORE Korea Final*); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35316 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 35313 (June 2, 2016) (*CORE Taiwan Final*); *Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35308 (June 2, 2016) (*CORE China CVD Final*); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Final Negative Countervailing Duty Determination,* 81 FR 35299 (June 2, 2016) (*CORE Taiwan CVD Final*); *Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part,* 81 FR 35326 (June 2, 2016) (*CORE Italy CVD Final*); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination,* in Part, 81 FR 35310 (June 2, 2016) (*CORE Korea CVD Final*); *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation,* 67 FR 19157, 19158 (April 18, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia,* 67 FR 47509 (July 19, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China,* 67 FR 62107 (October 3, 2002); *Notice of Final Determination of Sales at Less Than Fair*

found dumping margins of 15 percent or more (for CEP sales) to 25 percent or more (EP sales) to be sufficient for this purpose.[12] For purposes of this investigation, Commerce preliminarily determines that for Ban Me Thuot Honey Bee Joint Stock Company (Ban Me Thuot), Dak Lak Honey Bee Joint Stock Company (DakHoney), eligible separate rate respondent companies in Vietnam, and ''Vietnam-wide entity,'' the preliminary dumping margins exceed the 25 percent threshold for EP sales and, therefore, Commerce further preliminarily determines that the knowledge standard has been met based on the magnitude of the dumping margins.[13]

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, Commerce normally will look to the preliminary injury determination of the ITC.[14] If the ITC finds a reasonable indication of present material injury (rather than the threat of injury) to the relevant U.S. industry, Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. Here, the ITC found that there is a ''reasonable indication'' of material injury to the domestic industry because of the imported subject merchandise from Vietnam.[15] Therefore, the ITC's preliminary injury determination is sufficient to impute knowledge to importers of the likelihood of material injury. Thus, Commerce preliminarily determines that importers knew, or should have known, that there was likely to be material injury caused by reason of such imports, pursuant to section 733(e)(1)(A)(ii) of the Act.

Section 733(e)(1)(B): Whether There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

Pursuant to section 733(e)(1)(B) of the Act, as well as 19 CFR 351.206(h), Commerce will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). As noted above, the ''relatively short period'' that we examine to determine whether there have been massive imports normally begins on the date the petition is filed and ends at least three months later. Furthermore, Commerce may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.[16] However, Commerce has previously considered a ''relatively short period'' beginning with the filing of the petition and ending with the preliminary determination.[17]

We typically compare this period (the comparison period) to a period of equal duration immediately prior to the filing of the petition (the base period) to determine whether imports have been ''massive'' over a relatively short period of time.[18] Commerce typically determines whether or not to include the month in which the petition was filed in the base or comparison period depending on whether the petition was filed in the first half of the month (included in the comparison period) or the second half of the month (included in the base period).[19] In the instant investigation, since the petition was filed on April 21, 2021, we included April in the base period. Therefore, we compared the quantity of Ban Me Thuot's and DakHoney's shipments of subject merchandise to the United States during the period October 2020 through April 2021 to the quantity of its shipments of subject merchandise to the United States from May 2021 through November 2021 to determine whether imports have been massive. This comparison shows that imports over the comparison period have been massive (there has been an increase of 15 percent or more) for Ban Me Thuot and DakHoney. Accordingly, we preliminarily find that there were massive imports of subject merchandise from Ban Me Thuot and DakHoney into the United States over a relatively short period pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).[20]

To determine whether there have been massive imports of subject merchandise into the United States over a relatively short period from the eligible separate rate respondent companies in Vietnam and the ''Vietnam-wide entity,'' consistent with Commerce's practice, we compared the quantity of imports into the United States under the Harmonized Tariff Schedule numbers listed in the scope, as reported by Global Trade Atlas, for the same periods noted above (*i.e.,* October 2020 through April 2021 and May 2021 through November 2021) less the quantity of shipments of subject merchandise to the United States reported by Ban Me Thuot and DakHoney for those periods.[21] Based on this comparison, we preliminarily find that imports of subject merchandise into the United States from the eligible

Value: Certain Cold-Rolled Carbon Steel Flat Products from India, 67 FR 47518 (July 19, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 67 FR 62124 (October 3, 2002); *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 67 FR 62112 (October 3, 2002); and *Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation,* 67 FR 62121 (October 3, 2002).

[12] *Id.; see also Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 31972, 31978 (June 11, 1997), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 61964 (November 20, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 42672 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[13] *See Preliminary Determination; see also* Memorandum, ''Less-Than-Fair-Value Investigation of Raw Honey from the Socialist Republic of Vietnam: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination,'' dated November 17, 2021.

[14] See, *e.g.,* Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 75 FR 24572, 24573 (May 5, 2010), unchanged in Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry, 75 FR 30377 (June 1, 2010).

[15] *See* ITC Preliminary Determination.

[16] *See* 19 CFR 351.206(i).

[17] *See, e.g., Prestressed Concrete Steel Wire Strand from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 73676 (November 19, 2020). and accompanying PDM; and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India,* 69 FR 76916 (December 23, 2004).

[18] *Id.*

[19] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances,* 77 FR 31309, 31312 (May 25, 2012).

[20] *See* Memorandum, ''Antidumping Duty Investigation of Raw Honey from Argentina: Preliminary Critical Circumstances Surge Analysis,'' dated November 17, 2021 (*Critical Circumstances Memo*).

[21] *See CORE Critical Circumstances Prelim; see also CORE India Final; CORE Italy Final; CORE Korea Final; CORE China Final; CORE Taiwan Final; CORE China CVD Final; CORE Taiwan CVD Final; CORE Italy CVD Final;* and *CORE Korea CVD Final.* Commerce notes that it preliminarily determined that the ''Vietnam-wide entity'' was a cooperating entity. *See Preliminary Determination.*

separate rate respondent companies in Vietnam and the ''Vietnam-wide entity'' increased by more than 15 percent in the comparison period compared to the base period.[22] Therefore, we preliminarily find that there were massive imports of subject merchandise from the eligible separate rate respondent companies in Vietnam and the ''Vietnam-wide entity'' over a relatively short period pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).

Preliminary Affirmative Determination of Critical Circumstances

Record evidence indicates that importers of raw honey from Vietnam knew, or should have known, that exporters were selling the merchandise at LTFV, and that there was likely to be material injury by reason of such sales. In addition, we have found that Ban Me Thuot, DakHoney, the eligible separate rate respondent companies in Vietnam, and the ''Vietnam-wide entity'' had massive imports during a relatively short period. Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily find that there is reason to believe or suspect that critical circumstances exist for imports of the merchandise under consideration from Ban Me Thuot, DakHoney, the eligible separate rate respondent companies in Vietnam, and the ''Vietnam-wide entity.''[23]

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, we are directing the U.S. Customs and Border Protection to suspend liquidation of any unliquidated entries of the merchandise under consideration from Vietnam entered, or withdrawn from warehouse for consumption, on or after August 25, 2021, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative critical circumstances determination.

Public Comment

In the *Preliminary Determination,* Commerce stated that case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.[24] A timeline for the submission of case briefs and written comments on non-scope issues will be announced at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[25] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[26] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

This determination is published pursuant to sections 733(f) and 777(i) of the Act, and 19 CFR 351.206(c)(2)(ii).

Dated: December 30, 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.

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[22] *See Critical Circumstances Memo.*

[23] *See* section 733(f) of the Act; *see also* 19 CFR 351.206(c)(2)(ii).

[24] *See Preliminary Determination.*

[25] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[26] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *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

Announcement of Certain Approved 2022 International Trade Administration Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing four upcoming trade missions that will be recruited, organized, and implemented by ITA. A summary of each mission is found below.

ADDRESSES: Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.*

For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Gemal Brangman, Trade Promotion Programs, Industry and Analysis, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3773 or email *Gemal.Brangman@trade.gov.*

SUPPLEMENTARY INFORMATION: These missions are:

- Trade Mission to the UAE in Conjunction with Trade Winds Middle East & North Africa Business Forum—March 2–10, 2022.
- Trade Mission to Central America in Conjunction with Trade Americas—Business Opportunities in Central America Conference—March 27, 2022–April 1, 2022.
- Minority-Business Focused Trade Mission (MBTM) to Italy, Spain, and Portugal—May 15–20, 2022.
- Aerospace Trade Mission to India—June 21–24, 2022.

The Following Conditions for Participation Will Be Used for Each Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: Reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for the mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least 51% U.S. content by value. In the case of an organization, the applicant must certify that, for each entity to be represented by the organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

An organization applicant must certify to the above for all of the companies it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the export of products and services that it wishes to market through the mission is in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for Each Mission

Targeted mission participants are U.S. firms, services providers and organizations (universities, research institutions, or financial services trade associations) providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of an organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of an organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of an organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

With a view to maintaining balanced representation, the size and geographical location of applicants may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

Important Note About the Covid–19 Pandemic

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previous selected applicants with the option to opt-in to the new virtual program. Mission participants are responsible for compliance with all COVID–19-related requirements related to travel to, within, and from trade mission destinations, including vaccinations, and, where appropriate, testing. In addition, mission locations and venues may have additional requirements, such as masking and/or social distancing.

Mission List: (Additional information about each mission can be found at *https://www.trade.gov/trade-missions*).

Trade Mission to the UAE in Conjunction With Trade Winds Middle East & North Africa Business Forum

Dates: March 2–10, 2022

Summary

The United States Department of Commerce, International Trade Administration (ITA), U.S. and Foreign Commercial Service (USFCS) is organizing a trade mission to the United Arab Emirates that will include the Trade Winds Middle East & North Africa Business Forum in Dubai, UAE, Sunday, March 6–Tuesday, March 8.

All trade mission members will participate in the Trade Winds Middle East & North Africa Business Forum (Sunday, March 6, Monday, March 7 and Tuesday, March 8) in Dubai, which will also be open to U.S. companies only wanting to attend the Forum. Trade

mission members may travel first to Algeria, Morocco, Qatar or Israel on March 2 for spins-offs and/or travel on Tuesday, March 8 to Saudi Arabia, Kuwait or Egypt.

The Dubai Trade Winds event will be attended by Senior Commercial Officers and State Department Officers from Gulf and Arab Levant, North Africa and Sub-Saharan Africa markets.

Trade mission participants may participate in their choice of mission stops based on recommendations from the USFCS. Each trade mission stop will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint-venture partners, and networking events. Companies that would like to participate in more than 3 mission stops can do so by having additional representatives travel to the various stops.

This mission is open to U.S. companies from a cross section of industries with growth potential in the Middle East and North Africa, including but not limited to: Information & communication technologies, design & construction, energy & environmental technologies, aerospace and defense, healthcare, franchising and consumer goods.

Proposed Timetable

This timetable allows for clients to take part in business matchmaking across the diverse Middle East and North Africa marketplace by offering scheduled business-to-business meetings in the UAE, Egypt, Algeria, Morocco, Saudi Arabia, Kuwait or Qatar. This structure ensures that each post has set days for meetings that allow the clients to explore at least three of their best prospects for business.

Wednesday, March 2	Arrive in Qatar, Algeria, Morocco, or Israel.
Thursday, March 3	Select trade mission meetings in Algeria, Morocco, Qatar or Israel and evening networking receptions.
Friday, March 4	Depart mission stops and arrive in Dubai, UAE.
Saturday, March 5	Visit World Expo.
Sunday, March 6	Dubai: Trade Winds Middle East & North Africa Business Forum Market Briefings, consultations with U.S. government trade representatives and networking with U.S. and foreign government and business officials.
Monday, March 7	Dubai: Trade Winds Middle East & North Africa Business Forum Market Briefings, consultations with U.S. government trade representatives and networking with U.S. and foreign government and business officials.
Tuesday, March 8	Dubai: Trade Winds Middle East & North Africa Business Forum Market Briefings, Business to Business meetings, consultations with U.S. government trade representatives and networking with U.S. and foreign government and business officials.
Wednesday, March 9	Depart Dubai and arrive in Saudi Arabia, Kuwait or Egypt.
Thursday, March 10	Select trade mission meetings in Saudi Arabia, Kuwait or Egypt and evening networking receptions.
Friday, March 11	Trade Mission Participants Depart.

Website: Please visit our official mission website for more information: *https://www.itamatch.com/event/tradewinds22.*

Participation Requirements

All parties interested in participating in the trade mission to the UAE (including mission stops with business matchmaking in the UAE, Saudi Arabia, Kuwait, Qatar, Israel, Algeria, Egypt and/or Morocco must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below.

A minimum of 40 companies and/or trade associations will be selected to participate in the mission from the applicant pool on a rolling basis. Mission stop participation will be limited as follows:

Business Matchmaking Capacity

The UAE: 30
Egypt: 10
Saudi Arabia: 15
Kuwait: 12
Qatar: 14
Algeria: 5
Morocco: 12
Israel/West Bank: 10

Additional delegates may be accepted based on available space. U.S. companies and/or trade associations already doing business in or seeking business in the UAE, Egypt, Algeria, Morocco, Israel, Saudi Arabia, Kuwait, and Qatar for the first time may apply.

Fees and Expenses

If an applicant is selected to participate in a mission a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

- The fee for companies to only participate in the Business Forum in Dubai from March 6–8, 2022, is $750. The trade mission fees below include participation in the Business Forum in Dubai.
- For one mission stop, the participation fee will be $2,200 for a small or medium-sized enterprise (SME) and $4,200 for large firms.
- For two mission stops, the participation fee will be $3,400 for a small or medium-sized enterprise (SME) and $5,400 for large firms.
- For three mission stops, the participation fee will be $4,600 for a small or medium-sized enterprise (SME) and $6,600 for large firms.
- For four mission stops, the participation fee will be $5,800 for a small or medium-sized enterprise (SME) and $7,800 for large firms.
- An additional representative for both SMEs and large firms at the Forum or mission stops will require a one-time additional fee of $500.

Application

All interested firms and associations may register via the following link: *https://www.itamatch.com/event/tradewinds22.*

Timeframe for Recruitment and Application

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the U.S. Department of Commerce trade mission calendar and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin September 7 and conclude no later than January 31, 2022. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the maximum number of participants is selected. After January 31, 2022, applications will be considered only if space and scheduling constraints permit.

Contacts

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Trade Mission to Central America in Conjunction With the Trade Americas—Business Opportunities in Central America Conference

Dates: March 27–April 1, 2022

Summary

As part of the Biden Administration's Root Causes Strategy, which seeks increase and diversify trade between the United States and Central America, the United States Department of Commerce, International Trade Administration, is organizing a trade mission to Central America that will include the *Trade Americas—Business Opportunities in Central America Conference* in Guatemala City, Guatemala on March 27–April 1, 2022.

U.S. trade mission delegation participants will arrive in Guatemala City, Guatemala, on or before March 27 to attend the opening reception for the *Trade Americas—Business Opportunities in Central America Conference,* which is also open to U.S. companies not participating in the trade mission. Trade mission participants will attend the Conference on March 28. Following the morning session of the conference, trade mission participants will participate in one-on-one consultations with U.S. and Foreign Commercial Service (US&FCS) Commercial Officers and/or Department of State Economic/Commercial Officers from the following U.S. Embassies in the region: Costa Rica, El Salvador, Honduras, Guatemala, Belize, and Panama. The following day, March 29, trade mission participants will travel to engage in business-to-business appointments, each of which will be with a pre-screened potential buyer, agent, distributor, or joint-venture partner, in up to two markets in the Central America Region.

The Department of Commerce's *Trade Americas—Business Opportunities in Central America Conference* will focus on regional and industry-specific sessions, market entry strategies, legal, logistics, and trade financing resources as well as pre-arranged one-on-one consultations with US&FCS Commercial Officers and/or Department of State Economic/Commercial Officers with expertise in commercial markets throughout the region.

The mission is open to U.S. companies from a cross section of industries with growing potential in Central America, but is focused on U.S. companies representing best prospects sectors such as Agriculture, Automotive Parts, Accessories, and Service Equipment, Construction Equipment and Services, Cosmetics, Cybersecurity, Design and Construction, Disposable Medical Supplies, Education and Training, Energy, Franchising, Information and Communications Technology, Medical Equipment, Packaging Equipment & Machinery, Plastics, Safety & Security, Solar Energy Products, Travel and Tourism.

The combination of the *Trade Americas—Business Opportunities in Central America Conference* and business-to-business matchmaking opportunities in six Central American countries will provide participants with access to substantive information on strategies for entering or expanding their business across the Central America region.

Proposed Timetable

The mission fee will include registration for the *Trade Americas—Business Opportunities in Central America Conference,* including conference materials and admission to all sessions and networking events with industry and government representatives, country market briefings, and logistics support. It also includes one-on-one appointments with pre-screened potential business partners in up to two markets in Central America.

U.S. trade mission delegation participants will arrive in Guatemala City, Guatemala on or before March 27, to attend the opening reception for the *Trade Americas—Business Opportunities in Central America Conference,* which is also open to U.S. firms not participating in the trade mission. Trade mission participants will attend the conference on March 28. Following the morning session of the conference, trade mission participants will participate in one-on-one consultations with US&FCS commercial officers and/or Department of State economic/commercial officers from the following U.S. Embassies in the region: Costa Rica, El Salvador, Honduras, Guatemala, Belize, and Panama. The following day, March 29, trade mission participants will engage in business-to-business appointments in Guatemala City, or travel to another selected/approved market for business-to-business appointments. Business-to-business appointments will be with prescreened potential buyers, agents, distributors, or potential joint venture partners in up to two markets in Central America.

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

March 26, 2022	Travel Day/Arrival in Guatemala City. Optional Local Tour.
March 27, 2022	Guatemala City. Afternoon: Registration, U.S. Embassy Officer Consultations and Market Briefing. Evening: Networking Reception.
March 28, 2022	Guatemala City. Morning: Registration and Trade Americas—Business Opportunities in Central America Conference. Afternoon: U.S. Embassy Officer Consultations and Workshops. Evening: Networking Reception.

Optional

March 29–April 1, 2022	Travel and Business-to-Business Meetings in (choice of up to two markets): Option (A) Costa Rica. Option (B) Guatemala. Option (C) El Salvador. Option (D) Belize Option (E) Honduras. Option (F) Panama.
April 2, 2022	Travel Day. Return to the U.S.

Participation Requirements

All parties interested in participating in the U.S. Department of Commerce Trade Mission to Central America must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below.

A minimum of 20 and a maximum of 40 firms and/or trade associations will be selected to participate in the mission on a first-come first-serve basis. During the registration process, applicants will be able to select the countries from which they would like to receive a brief market assessment. Once they receive their brief market assessment report, they will be able to select up to two markets in which they would like to travel for their business-to-business meetings.

All selected participants will attend the conference in Guatemala and will have business-to-business meetings in up to two markets in the region.

The number of firms that may be selected for each country are as follows: 10 companies for Costa Rica, 10 companies for Guatemala, 10 companies for El Salvador, 5 companies for Belize, 10 companies for Honduras, and 10 companies for Panama.

The Trade Mission is open to U.S. firms already doing business in the region who are seeking to expand their market share and to those U.S. firms new to the region.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. Up to two markets can be selected for business-to-business meetings.

The fees are as follow:

If only one market is selected for business-to-business meetings, the participation fee will be $2,500 for a small or medium-sized enterprises (SME) [1] and $4,000 for large firms.

If two markets are selected for business-to-business meetings, the participation fee will be $3,500 for a small or medium-sized enterprises (SME) [1] and $5,000 for large firms.

The mission participation fee includes the *Trade Americas—Business Opportunities in Central America Conference* registration fee of $500 per participant from each firm.

There will be a $300 fee for each additional firm representative (large firm or SME) that wishes to participate in business-to-business meetings in any of the markets selected.

Timeframe for Recruitment and Application

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar on *www.trade.gov,* the Trade Americas web page at *https://www.trade.gov/trade-americas-events,* and other internet websites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade associations and other multiplier groups and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than Friday, January 28, 2022. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the maximum of 40 participants are selected. After Friday, January 28, 2022, companies will be considered only if space and scheduling constraints permit.

Contacts

U.S. Trade Americas Team Contact Information

Delia Valdivia, Sr. International Trade Specialist, U.S. Commercial Service—Los Angeles (West), CA, *delia.valdivia@trade.gov,* Tel: 310–235–7203

Diego Gattesco, Director, U.S. Commercial Service—Wheeling, WV, *Diego.Gattesco@trade.gov,* Tel: 304–243–5493

Central America Region Contact Information

John Howell, Senior Commercial Officer, U.S. Commercial Service—Guatemala, *John.Howell@trade.gov,* Tel: +502 2326 4227

Minority-Business Focused Trade Mission (MBTM) to Italy, Spain, and Portugal

Dates: May 15–20, 2022

Mission Description

The United States Department of Commerce, International Trade Administration (ITA), is organizing an executive-led Minority-Business Focused Trade Mission (MBTM) to Southwestern Europe: Italy, Spain, and Portugal from Sunday, May 15, 2022 to Saturday, May 21, 2022.

The recruitment for the MBTM will be a targeted focus on minority businesses. However, recruitment and consideration will be given to all export-ready companies that meet the established criteria for participation in the mission. Trade mission activities will be designed to target the export assistance needs of minority businesses. For purposes of the trade mission, a ''minority business'' is one that falls within the Minority Business Development Agency's definition of Minority Business Enterprises: Organizations that are owned or controlled by the following persons or groups of persons are the organizations that are considered MBEs: African-American, Hispanic-American, American Asian and Pacific Islander, Native American (including Alaska Natives, Alaska Native Corporations and Tribal entities), Asian Indian American, and Hasidic Jewish American. See 15 CFR 1400.1, 1400.2 and Executive Order 11625 (1969). This mission is in full alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 25, 2021), the goals of which include advancing racial equity and provide support for minority business enterprises. This mission is also in full alignment with the President's 2021 Trade Policy Agenda's statement on Advancing Racial Equity and Supporting Underserved Communities, which notes, ''The trade agenda will support domestic initiatives that eliminate social and economic structural barriers to equality and economic opportunity.''

The focus of the MBTM is on the information and communication technology (ICT) sector and subsectors

of cybersecurity, smart city infrastructure and technology solutions, artificial intelligence markets and cloud computing, and energy, environmental technology, and safety and security technology applications.

The delegation will be comprised of representatives with decision-making authority from U.S. companies, U.S. trade associations and national minority chambers of commerce representing businesses in the cited sectors, with an emphasis on recruiting and vetting minority businesses as defined by MBDA. This mission is aligned with a key goal of the Biden-Harris Administration to build back better with equity.

The mission will make three stops: Milan, Italy, Madrid, Spain, and Lisbon, Portugal. The purpose of the planned executive-led mission is to provide opportunities for U.S. companies, to access the Southwestern European regional market and increase U.S. exports to the European Union (EU) region by connecting U.S. firms and trade associations to pre-screened business prospects.

Proposed Timetable

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Sunday, May 15, 2022	• Trade Mission Participants Arrive in Milan, Italy and Check in their Hotel and for those that arrive on time attend a Hosted Welcome Reception.
Monday, May 16	• Morning Mission Briefing on Doing Business in Italy, B2B meetings, Networking Lunch with Government or Industry Speaker and Evening Networking Reception hosted by Consul General.
Tuesday, May 17	• Checkout of Hotel, Morning B2B meetings, Networking Lunch, Cultural Tour and Transfer to Airport for Travel to Madrid, Spain, Arrive in Spain and Check into Hotel, Dinner (no host).
Wednesday, May 18	• Morning Briefing on Doing Business in Spain, B2B meetings, Networking Lunch, followed by B2B Afternoon Meetings and Networking Reception.
Thursday, May 19	• Checkout of Hotel, Travel from Spain to Lisbon Portugal, Check in Hotel, Open, and Networking Reception.
Friday, May 20	• B2B Meetings, Briefing on Doing Business in Portugal, Networking Lunch and B2B/B2G Meetings, Informal Reception, Mission is completed.
Saturday, May 21	• Checkout Hotel, Transfer to Airport, Mission Participants Leave Portugal and Travel Home or to Spin-off. Mission is completed.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and maximum of 20 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the MBTM will be $5,500 for small or medium-sized enterprises (SME);[1] and $8,100 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $1000, with a limit of 2 additional representatives for each participating firm. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

We will also try to reduce costs for meals through the in-kind offers of sponsors. Sponsor recruitment success is highly dependent on the types of companies participating. We will work to recruit global and local sponsors for the trade mission.

Timeline for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than March 04, 2022. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a staggered basis. The Department of Commerce will evaluate applications and inform applicants of selection decisions three times during the recruitment period. All applications received subsequent to an evaluation date will be considered at the next evaluation. Deadlines for each round of evaluation are as follows:

- *First Evaluation:* January 28, 2022.
- *Second Evaluation:* February 18, 2022.
- *Final Evaluation:* March 4, 2022.

Applications received after March 04, 2022, will be considered only if space and scheduling constraints permit.

Contacts

Project Lead

- Scott Pozil, Regional Senior Commercial Officer, France, +33 625278431 *Scott.Pozil@trade.gov,* Overall Lead.
- Tanya Cole, Principal Commercial Officer, Milan, Italy, +39 340 495 3498 *Tanya.Cole@Trade.gov*.
- Linda Caruso, Deputy Commercial Officer, Spain, +34 670 020 110 *Linda.Caruso@Trade.gov*.
- Rafael Patino, Senior Commercial Officer, Portugal, +35 91 931 9781 *Rafael.Patino@Trade.gov*.
- Fernando Jimenez, Senior International Trade Specialist, USEAC, Phoenix, AZ, +1–480 737 1128, Domestic Point of Contact.

Aerospace Mission to India

Dates: June 21–24, 2022

Mission Description

The United States Department of Commerce, International Trade Administration (ITA), is organizing an

[1] For purposes of assessing participation fees, an applicant is a small- or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support-table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

Aerospace Trade Mission to India on June 21–24, 2022.

The purpose of the mission is to introduce U.S. companies to India's aerospace ecosystem and assist delegate companies with finding business partners and exporting their products and services to the region. The mission will target approximately fifteen U.S. companies and trade association representatives with members that provide products and services related to airport infrastructure, ICT/security systems, aerospace equipment, avionics, Maintenance, Repair, and Overhaul (MRO), training, unmanned aerial vehicle (UAV) technologies, and possibly space technologies. It is possible to increase this number to as high as 25 if we limit the number of Gold Keys and one-on-one matchmaking services to 10 of the delegates. This is necessary since the mission is constrained to one and a half days per mission stop, so this is already between 30 and 50 B2Bs per stop.

Mission delegates will have access to business development opportunities across India. Participating firms will gain market insight, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports of products and services in the aerospace sector. The subsectors will depend on the nature of the market, potential demand, prospective government procurements, and other factors closer to the start of recruitment.

The mission will include customized one-on-one business appointments with pre-screened potential buyers, agents, distributors, and joint venture partners. It will also include meetings with central, state, and local government officials and industry leaders, as well as networking events. The mission will include stops in New Delhi and Mumbai, with optional stops in Hyderabad and Bengaluru.

Proposed Timetable

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Monday, June 20, 2022	• Trade Mission Participants Arrive in New Delhi, India.
Tuesday, June 21, 2022	• Plenary Session—U.S. Embassy officials welcome delegation. • Market Briefing: The Aerospace Sector in India—Opportunities and Challenges. • B2B and B2G Meetings for Mission Delegates in Delhi. • Reception Hosted by USIBC/USISPF/AmCham/Other (TBC).
Wednesday, June 22, 2022	• B2B and B2G Meetings for Mission Delegates in Delhi. • Flight to Mumbai. • Networking Reception Hosted by Local Chamber (TBC).
Thursday, June 23, 2022	• B2B and B2G Meetings for Mission Delegates in Mumbai. • Departure for Optional Spin-Offs.
Friday, June 24, 2022	• B2B and B2G Meetings in Spin-Off Locations (Bengaluru/Hyderabad). • Departure for the United States.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission will target a delegation of 15 firms, with a minimum of 10 to make the mission viable.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Aerospace Mission to India will be $2,800 for small or medium-sized enterprises (SME); and $5,500 or large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $1,000. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Timeline for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than May 6, 2022. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after May 6, 2022 will be considered only if space and scheduling constraints permit.

Contacts

1. Geoffrey Parish, Principal Commercial Officer, North India, U.S. Commercial Service, New Delhi, India, Tel: +91–11–2347 2000, Email: *geoffrey.parish@trade.gov*
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3. Nisha Wadhawan, Commercial Specialist, U.S. Commercial Service, New Delhi, India, Tel: +91–11–2347 2000, Email: *nisha.wadhawan@trade.gov*
4. Shamli Menon, Commercial Specialist, U.S. Commercial Service, Mumbai, India
5. Theodate Immanuel, Commercial Specialist, U.S. Commercial Service, Hyderabad, India
6. Manjushree Phookan, Commercial Specialist, U.S. Commercial Service, Bengaluru, India
7. Amy Magat, Sr., International Trade Specialist, U.S. Commercial Service, Downtown Los Angeles, Tel: +1 (213) 276–2990, Email: *amy.magat@trade.gov*
8. Oscar Magaña, International Trade Specialist, U.S. Commercial Service, San Antonio, TX, Tel: +1

(210) 419–3043, Email: *oscar.magana@trade.gov*

9. Meredith Boyle, International Trade Specialist (Aerospace & Defense), Office of Transportation and Machinery, Tel: +202–839–2347, Email: *meredith.boyle@trade.gov*

Dated: January 4, 2022.

Renee Diggs,

International Trade Specialist, ITA Events Management Task Force.

[FR Doc. 2022–00220 Filed 1–12–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–834]

Utility Scale Wind Towers From Indonesia: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination; Notice of Revocation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 28, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *PT. Kenertec Power System* v. *United States,* Consol. Ct. No. 20–03687, sustaining the Department of Commerce (Commerce)'s remand redetermination pertaining to the countervailing duty (CVD) investigation of utility scale wind towers (wind towers) from Indonesia covering the period of investigation, January 1, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation and that Commerce is amending the final determination with respect to the countervailable subsidy rate determined for PT. Kenertec Power System (Kenertec). Because the amended countervailable subsidy rate determined for Kenertec, the only individually-examined respondent in the investigation, is now *de minimis,* Commerce is hereby revoking the CVD order.

DATES: Applicable January 7, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Melissa Kinter, 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) 482–1959 or (202) 482–1413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2020, Commerce published its final determination in the CVD investigation of wind towers from Indonesia. Commerce reached an affirmative determination that Kenertec received countervailable subsidies at a net countervailable subsidy rate of 5.90 percent.[1] Commerce subsequently published the CVD order on wind towers from Indonesia.[2]

Kenertec and the Wind Tower Trade Coalition, the petitioner in the investigation, appealed Commerce's *Final Determination.* On July 20, 2021, the CIT remanded the *Final Determination* to Commerce, directing Commerce to address whether it improperly included an export subsidy in its upstream subsidy calculation.[3] In the final remand redetermination, issued in August 2021, Commerce: (1) Determined that the Rediscount Loan Program is an export subsidy; (2) concluded that the export subsidy was improperly included in the upstream subsidy calculation for Kenertec in the *Final Determination;* and (3) excluded the export subsidy from the calculation.[4] The changes made in the *Final Redetermination* resulted in a *de minimis* net countervailable subsidy rate of 0.85 percent for Kenertec. The CIT sustained Commerce's *Final Redetermination.*[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 28, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to Kenertec as follows:

Producer/exporter	Percent *ad valorem*
PT Kenertec Power System.	0.85 (*de minimis*).

Revocation of Countervailing Duty Order

Pursuant to section 705(a)(3) of the Act, Commerce ''shall disregard any countervailable subsidy that is *de minimis* as defined in section 703(b)(4)'' of the Act. Furthermore, and pursuant to section 705(c)(2) of the Act, ''the investigation shall be terminated upon publication of that negative determination'' and Commerce shall ''terminate the suspension of liquidation'' and ''release any bond or other security and refund any cash deposit.'' As a result of this amended final determination, Commerce is hereby revoking the CVD order on wind towers from Indonesia because the revised CVD rate determined for Kenertec, the only mandatory respondent, is now *de minimis.*[8] Because the revised net countervailable subsidy rate determined for the sole mandatory respondent, Kenertec, is *de minimis,* Commerce did not determine an all-others rate in the *Final Redetermination.* Accordingly, Commerce intends to issue instructions to U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries pursuant to the order. As a result of this revocation, Commerce will not initiate administrative reviews of this order.

Cash Deposit Requirements and Liquidation of Suspended Entries

As a result of this amended final determination, Commerce is revoking the CVD order on wind towers from Indonesia. Accordingly, Commerce will instruct CBP to cease any collection of cash deposits of estimated CVD duties

[1] *See Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 85 FR 40241 (July 6, 2020) (*Final Determination*).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders,* 85 FR 52543 (August 26, 2020).

[3] *See PT. Kenertec Power System* v. *United States,* Consol. Ct. No. 20–03687, CM/ECF Doc. No. 38 (CIT July 20, 2021).

[4] *See Final Results of Redetermination Pursuant to Court Remand, PT. Kenertec Power System & Wind Tower Trade Coalition* v. *United States,* Consol. Ct. No. 20–03687, dated August 18, 2021 (*Final Redetermination*), available at *https://access.trade.gov/resources/remands/20-03687.pdf.*

[5] *See PT. Kenertec Power System* v. *United States,* Consol. Ct. No. 20–03687, Slip Op. 21–175 (CIT December 28, 2021).

[6] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[7] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[8] *See Final Redetermination.*

on entries of wind towers from Indonesia and to release any bonds or other security and refund cash deposits pertaining to any suspended entries of wind towers from Indonesia. Although section 705(c)(2)(A) of the Act instructs Commerce to terminate suspension of liquidation, we note that, pursuant to *Timken,* the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will instruct CBP at this time to: (1) Release any bond or other security and refund any cash deposit made pursuant to the order as discussed above; and (2) continue to suspend liquidation of all unliquidated entries of wind towers from Indonesia at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption on or after January 7, 2022, which is ten days after the court's decision, in accordance with section 516A of the Act.[9] In the event that the CIT's judgment affirming the *Final Redetermination* is not appealed, or is appealed and upheld by the U.S. Court of Appeals for the Federal Circuit, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate those entries of subject merchandise without regard to countervailing duties. Notwithstanding the continued suspension pursuant to *Timken* described above, the CVD order on wind towers from Indonesia is hereby revoked.

At this time, Commerce remains enjoined by CIT order during the pendency of litigation, including any appeals, from liquidating entries of wind towers from Indonesia that were produced and/or exported by Kenertec and that were entered, or withdrawn from warehouse, during the period December 13, 2019, through December 31, 2020, excluding entries on or after April 11, 2020, through August 24, 2020. Pursuant to the terms of the injunction, the enjoined entries of subject merchandise will be liquidated in accordance with the final court decision in this action, including all appeals, as provided in section 516A(e) of the Act.

[9] *See, e.g., Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037, 78038 (December 29, 2014); and *High Pressure Steel Cylinders from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review,* 82 FR 46758, 46760 (October 6, 2017).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: January 7, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2022–00633 Filed 1–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Establishment and Call for Nominations To Serve on the Internet of Things Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Establishment and call for nominations to serve on the Internet of Things Advisory Board.

SUMMARY: The Secretary of Commerce (Secretary) established the Internet of Things Advisory Board (IoTAB) in accordance with the requirements of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, and in accordance with the Federal Advisory Committee Act, as amended (FACA), The IoTAB shall provide advice to the Internet of Things Federal Working Group on matters related to the Internet of Things as specified below. The IoTAB shall submit to the IoTFWG a report that includes any findings or recommendations related to the specific scope below.

The National Institute of Standards and Technology (NIST or Institute) invites and requests nominations of individuals for appointment to the IoTAB. Registered Federal lobbyists may not serve on NIST Federal Advisory Committees in an individual capacity.

DATES: Nominations to serve on the inaugural IoTAB by 5:00 p.m. Eastern Time on February 28, 2022.

ADDRESSES: Please submit nominations to Alicia Chambers, Committee Liaison Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899 and Barbara Cuthill, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 2000, Gaithersburg, MD 20899. Nominations may also be submitted via email to *alicia.chambers@nist.gov* and *barbara.cuthill@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Alison Kahn, Electronics Engineer, National Institute of Standards and Technology, 325 Broadway, MS 671, Boulder, CO 80305. Her email is *alison.kahn@nist.gov* and phone number is (303) 497–3523.

SUPPLEMENTARY INFORMATION:

Committee Information

The Secretary of Commerce (Secretary) established the Internet of Things Advisory Board (IoTAB) in accordance with the requirements of 9204(b)(5) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), and in accordance with the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. App. The The IoTAB shall submit to the IoTFWG a report that includes any findings or recommendations related to the specific scope below.

Objectives and Duties: The Board shall advise the Internet of Things Federal Working Group convened by the Secretary pursuant to Section 9204(b)(1) of the Act on matters related to the Federal Working Group's activities, as specified below.

The Board shall advise the Federal Working Group with respect to—

a. the identification of any Federal regulations, statutes, grant practices, programs, budgetary or jurisdictional challenges, and other sector-specific policies that are inhibiting, or could inhibit, the development of the Internet of Things;

b. situations in which the use of the Internet of Things is likely to deliver significant and scalable economic and societal benefits to the United States, including benefits from or to—

i. smart traffic and transit technologies;

ii. augmented logistics and supply chains;

iii. sustainable infrastructure;

iv. precision agriculture;

v. environmental monitoring;

vi. public safety; and

vii. health care;

c. whether adequate spectrum is available to support the growing Internet of Things and what legal or regulatory barriers may exist to providing any spectrum needed in the future;

d. policies, programs, or multi-stakeholder activities that—

i. promote or are related to the privacy of individuals who use or are affected by the Internet of Things;

ii. may enhance the security of the Internet of Things, including the security of critical infrastructure;

iii. may protect users of the Internet of Things; and

iv. may encourage coordination among Federal agencies with jurisdiction over the Internet of Things;

e. the opportunities and challenges associated with the use of Internet of Things technology by small businesses; and

f. any international proceeding, international negotiation, or other international matter affecting the Internet of Things to which the United States is or should be a party.

The Board shall submit to the Internet of Things Federal Working Group a report that includes any of its findings or recommendations. The report will be administratively delivered to the Internet of Things Federal Working Group through the Director of the National Institute of Standards and Technology (NIST).

The Board shall set its own agenda in carrying out its duties. The Federal Working Group may suggest topics or items for the Board to study, and the Board shall take those suggestions into consideration in carrying out its duties.

The Board will function solely as an advisory body, in accordance with the provisions of FACA.

Membership: Members of the Board shall be appointed by the Secretary. The Board shall consist of 16 members representing a wide range of stakeholders outside of the Federal Government with expertise relating to the Internet of Things, including: (i) Information and communications technology manufacturers, suppliers, service providers, and vendors; (ii) subject matter experts representing industrial sectors other than the technology sector that can benefit from the Internet of Things, including the transportation, energy, agriculture, and health care sectors; (iii) small, medium, and large businesses; (iv) think tanks and academia; (v) nonprofit organizations and consumer groups; (vi) security experts; (vii) rural stakeholders; and (viii) other stakeholders with relevant expertise, as determined by the Secretary.

The Board members shall serve terms of two years (unless the Board terminates earlier). Vacancies are filled as soon as highly qualified candidates in a needed area of stakeholder interest are identified and available to serve. Members of the Board shall serve as representative members. Full-time or permanent part-time Federal officers or employees will not be appointed to the Board. Members must be citizens of the United States of America.

Members of the Board shall not be compensated for their services. Members of the Board, while attending meetings of the Board away from their homes or regular place of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code, for individuals intermittently serving in the Government without pay.

Members shall not reference or otherwise utilize their membership on the Board in connection with public statements made in their personal capacities without a disclaimer that the views expressed are their own and do not represent the views of the Board, the Federal Working Group, NIST, or the Department of Commerce.

The Secretary will appoint the Board's Chair from among the approved members in accordance with policies and procedures and, in doing so, shall determine the term of service for the Board's Chair.

Miscellaneous

Meetings will be conducted at least twice each year.

1. IoTAB meetings are open to the public.

2. Meeting will be virtual.

Nomination Information

NIST uses a nomination process to identify candidates for the Board. Nominations are requested through an announcement in the **Federal Register** and through solicitations through the Federal Working Group, NIST, the Department of Commerce, other Federal agencies, and organizations representing relevant businesses, consumers, communities, and economic sectors in order to ensure a robust and diverse pool of applicants. Candidates may be nominated by their peers or may self-nominate. NIST requests that the nomination includes a resume for the individual that specifically identifies the stakeholder interest of the individual being nominated. Qualifications considered may include, among others: Education, professional experience, and scientific and technical expertise in selected areas. The Director of the Information Technology Laboratory (ITL) recommends candidates for further review to fill vacancies on the Board in the areas of needed stakeholder interest and on the basis of the qualifications, the sectors the candidates may represent and the existing representation on the Board, and other balance factors. The Director of ITL recommends nominees to the Director of NIST, who reviews the recommendation for submission to the Secretary of Commerce. Candidates for the Board are then reviewed by and appointed by the Secretary of Commerce.

The Board members shall serve terms of two years (unless the Board terminates earlier). Vacancies are filled as soon as highly qualified candidates in a needed area of stakeholder interest are identified and available to serve.

The Department of Commerce seeks a broad-based and diverse IoTAB membership.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–00419 Filed 1–12–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB698]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Equinor Gulf of Mexico L.L.C. (Equinor) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from January 10, 2022, through May 28, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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 issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Equinor plans to conduct a zero offset vertical seismic profile (VSP) survey and offset source borehole seismic survey within the Walter Ridge Area. See attachment 4 of Equinor's application for a map. Equinor plans to use either a 12-element, 2,400 cubic inch (in^3) airgun array, or a 6-element, 1,500 in^3 airgun array. Please see Equinor's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Equinor in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of these survey types. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Coil was selected as the best available proxy survey type for Equinor's survey because the spatial coverage of the planned surveys is most similar to the coil survey pattern. For the planned Zero Offset VSP survey, one source will be deployed from a drilling rig at or near the borehole, with the seismic receivers (*i.e.,* geophones) deployed in the borehole on wireline at specified depth intervals. For the Offset source, the source will be deployed from the vessel in a fixed position and will alternate firing with the Zero Offset source. Both source assemblages will be stationary. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Equinor's planned survey is expected to cover no additional area as a stationary source, meaning that the coil proxy is most representative of the effort planned by Equinor in terms of predicted Level B harassment.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to the differences in both the airgun array (12 or 6 elements, 2,400 or 1,500 in^3), and in daily survey area planned by Equinor (as mentioned above), as compared to those modeled for the rule.

The survey is planned to occur for 1 day in Zone 5, and 1 day in Zone 7. The survey may occur in either season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for that species as described below.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach can result in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [3]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales would result in high estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For Equinor's survey, use of the exposure modeling produces an estimate of 1 killer whale exposure. Given the foregoing discussion, it is unlikely that even one killer whale would be encountered during this 2-day survey, and accordingly, no take of killer whales is authorized through the Equinor LOA.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be

[3] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a
Sperm whale	32	2,207	1.4
Kogia spp.	[4] 13	4,373	0.3
Beaked whales	163	3,768	4.3
Rough-toothed dolphin	29	4,853	0.6
Bottlenose dolphin	95	176,108	0.1
Clymene dolphin	79	11,895	0.7
Atlantic spotted dolphin	38	74,785	0.1
Pantropical spotted dolphin	483	102,361	0.5
Spinner dolphin	74	25,114	0.3
Striped dolphin	34	5,229	0.6
Fraser's dolphin	10	1,665	3.9
Risso's dolphin	20	3,764	0.5
Melon-headed whale	52	7,003	0.7
Pygmy killer whale	16	2,126	0.7
False killer whale	22	3,204	0.7
Killer whale	0	267	n/a
Short-finned pilot whale	12	1,981	0.6

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).
[4] Includes 1 take by Level A harassment and 12 takes by Level B harassment.

Based on the analysis contained herein of Equinor's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Equinor authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: January 7, 2022.

Catherine Marzin,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–00460 Filed 1–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB719]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Due to ongoing public safety considerations related to COVID–19, this meeting will be conducted entirely by webinar.

DATES: The webinar meeting will be held on Tuesday, Wednesday, and Thursday, February 1, 2, and 3, 2022, beginning at 10 a.m. on Tuesday and 9 a.m. on Wednesday and Thursday.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at *https://register.gotowebinar.com/register/3241130900598780683.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, February 1, 2022

After introductions and brief announcements, the Council will receive reports on recent activities from its Chair and Executive Director, the Greater Atlantic Regional Fisheries Office (GARFO) Regional Administrator, the Northeast Fisheries Science Center (NEFSC) Director, the NOAA Office of General Counsel, the Mid-Atlantic Fishery Management Council liaison, staff from the Atlantic States Marine Fisheries Commission (ASMFC), and representatives from the U.S. Coast Guard, NOAA's Office of Law Enforcement, and the Northeast Trawl Advisory Panel. Next, the Council will receive the Skate Committee report and take final action on Framework Adjustment 9 to the Northeast Skate

Complex Fishery Management Plan (FMP). This framework will revise: (1) The FMP's objectives; and (2) conditions for open access federal skate fishing permits.

Following the lunch break, the Council will take up ecosystem-based fishery management (EBFM) and receive brief updates on: (1) Informational EBFM workshops using public outreach materials, focusing on potential application to a Georges Bank example fishery ecosystem plan (eFEP); and (2) initial work to develop a Beta Management Strategy Evaluation (MSE) for EBFM and the Georges Bank eFEP. Then, the Council will go into the Habitat Committee report, which will cover three items. First, the Council will initiate a framework adjustment to designate Habitat Areas of Particular Concern in Southern New England. Second, the Council will receive a report on recent discussions between New England and Mid-Atlantic Council leadership about the Great South Channel Habitat Management Area (HMA) and consider next steps, including a clam industry request for secretarial emergency action to gain additional access to the HMA. The Council will conclude the habitat report with updates on offshore energy and other ongoing habitat-related work. It then will adjourn for the day. Following adjournment, the Council will go into a closed session to discuss two items: (1) Scientific and Statistical Committee appointments; and (2) Council policies on U.S. Equal Employment Opportunity (EEO) harassment in the workplace issues.

Wednesday, February 2, 2022

The Council will begin the day with the Scallop Committee report. First, the Council will receive and discuss the final report for the evaluation of the scallop fishery's rotational area management program. The Council also will receive a brief update on work being conducted by the Scallop Survey Working Group. This will be followed by an initial update on upcoming scoping sessions for potential development of a limited access leasing program. Next, the Council will receive a presentation from GARFO on the formation of the Atlantic Sturgeon Bycatch Working Group and an overview of the working group's planned activities. This will be followed by a report on: (1) Results from the 27th Regular Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT); and (2) recommendations from the Advisory Committee to the U.S. Section of ICCAT. Next, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. These comments will be received through the webinar. A guide for how to publicly comment through the webinar is available on the Council website at *https://s3.amazonaws.com/nefmc.org/NEFMC-meeting-remote-participation_generic.pdf.*

Following the lunch break, the Council will receive a congressional update about ongoing federal legislative activities. Next, the Council will receive a briefing on Atlantic mackerel stock status and work being done by the Mid-Atlantic Council to revise the mackerel rebuilding program based on results from the 2021 Atlantic Mackerel Management Track Stock Assessment. This will be followed by an update on the East Coast Climate Change Scenario Planning initiative, which will include: (1) A summary of the August/September 2021 kick-off webinars that were held to introduce scenario planning to stakeholders; and (2) an outline of next steps, including information about the upcoming February/March 2022 webinars that are intended to explore physical, biological, and social/economic drivers and uncertainties about how the marine ecosystem could be affected by climate change. The Council then will adjourn for the day.

Thursday, February 3, 2022

The Council will devote the third day of its meeting to the Groundfish Committee report, which includes three primary components. These are: (1) A presentation on and Council discussion of the final report from the 2021 series of Atlantic Cod Stock Structure Workshops, which covered both science and management issues; (2) a progress report from the Atlantic Cod Research Track Working Group, followed by Council discussion on the potential number of cod stocks that should be considered for assessment purposes and potential management units; and (3) the development of recommendations on fishing year 2022 recreational measures for Gulf of Maine cod and Gulf of Maine haddock. These recommendations will be submitted to GARFO.

The Council has scheduled a lunch break, which will be taken at a convenient time during the Groundfish Committee report. Following the conclusion of groundfish business, the Council will close out the meeting with other business.

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is being conducted entirely by webinar. Requests for auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 10, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–00611 Filed 1–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB724]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet via webconference January 31, 2022 through February 11, 2022.

DATES: The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, January 31, 2022 and continue through Friday, February 4, 2022. The Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday, February 1, 2022 and continue through Friday, February 4, 2022. The Council will begin at 8 a.m. on Monday, February 7, 2022 and continue through Friday, February 11, 2022. All times listed are Alaska Standard Time.

ADDRESSES: The meetings will be by webconference. Join online through the links at *https://www.npfmc.org/upcoming-council-meetings.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809.

Instructions for attending the meeting via webconference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809; email: *diana.evans@noaa.gov.* For technical support please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, January 31, 2022 Through Friday, February 4, 2022

The SSC agenda will include the following issues:

1. Economic Data Report (EDR) amendments—Final Action
2. BSAI Crab—Harvest Specifications/SAFE report for NSRKC, Crab Plan Team report, Crab modeling workshop report
3. Snow crab rebuilding plan—adopt alternatives
4. Allocation Review of Halibut Catch Share Plan for Areas 2C/3A
5. Trawl EM—preliminary review of sampling issues
6. EFH distribution, fishing effects models—review
7. Marine mammal status update—review
8. Economic SAFE report—review

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2754* prior to the meeting, along with meeting materials.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Tuesday, February 1, 2022 Through Friday, February 4, 2022

The Advisory Panel agenda will include the following issues:

1. Economic Data Report (EDR) amendments—Final Action
2. BSAI Crab—Harvest Specifications/SAFE report for NSRKC, Crab Plan Team report, Crab modeling workshop report
3. Snow crab rebuilding plan—adopt alternatives
4. Allocation Review of Halibut Catch Share Plan for Areas 2C/3
5. Greenland turbot with longline pots—discussion paper
6. Groundfish management policy—review (T)
7. Staff Tasking

Monday, February 7, 2022 Through Friday, February 11, 2022

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

1. All B Reports (Executive Director, NMFS Management, NOAA GC, ADF&G, USCG, USFWS, IPHC report (T))
2. SSC Report in full
3. Economic Data Report (EDR) amendments—Final Action
4. BSAI Crab—Harvest Specifications/SAFE report for NSRKC, Crab Plan Team report, Crab modeling workshop report
5. Snow crab rebuilding plan—adopt alternatives
6. Allocation Review of Halibut Catch Share Plan for Areas 2C/3
7. Greenland turbot with longline pots—discussion paper
8. Groundfish management policy—review (T)
9. Staff Tasking

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://www.npfmc.org/upcoming-council-meetings.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

Public Comment

Public comment letters will be accepted and should be submitted electronically through the links at *https://www.npfmc.org/upcoming-council-meetings.* The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The written comment period is open from January 14, 2022, to January 28, 2022, and closes at 5 p.m. Alaska Time on January 28th.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Authority: 6 U.S.C. 1801 *et seq.*

Dated: January 10, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–00612 Filed 1–12–22; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2021–0023]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is publishing this notice seeking comment on a Generic Information Collection titled, ''The Effect of Different Savings Elicitation Strategies on Emergency Savings Targets,'' prior to requesting the Office of Management and Budget's (OMB's) approval of this collection under the Generic Information Collection ''Generic Information Collection Plan for Studies of Consumers using Controlled Trials in Field and Economic Laboratory Settings'' under OMB Control number 3170–0048.

DATES: Written comments are encouraged and must be received on or before February 14, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2021–0023 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general,

all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Effect of Different Savings Elicitation Strategies on Emergency Savings Targets.

OMB Control Number: 3170–0048.

Type of Review: Request for approval of a generic information collection under an existing Generic Information Collection Plan.

Affected Public: Individuals.

Estimated Number of Respondents: 6,000.

Estimated Total Annual Burden Hours: 3,000.

Abstract: This project examines how the framing of savings plans can help consumers establish emergency savings. The Bureau plans to test whether asking consumers to think about opportunity costs for their money helps them save more effectively for emergencies. Our findings can inform Bureau-developed content aimed at helping Americans be better prepared for emergencies. The Bureau will conduct several studies as part of this project asking participants about their savings goals. Each study will involve unique participants. We expect to recruit about 6,000 participants across the life of the project. The Bureau will not receive any personally identifying information (PII). Any PII will be scrubbed by the contractor. We will collect demographics, psychological measures around savings, and consumers' savings goals. The Bureau originally published this notice on 12/29/2021 (86 FR 74075). However, the Bureau is now reissuing this notice due to an incorrect comment period end date. Bureau staff made no other changes to this notice or its description of the contained information collection requirements.

Request for Comments: The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be submitted to OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2022–00583 Filed 1–12–22; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for AmeriCorps Diversity Questionnaire Form

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 14, 2022.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* AmeriCorps, Attention Sharron Tendai, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Sharron Tendai, 202–391–1029, or by email at *stendai@cns.gov.*

SUPPLEMENTARY INFORMATION:

Comments

An emergency 30-day Notice requesting public comment was published in the **Federal Register** on August 24, 2021 at Vol. 86: 47301. This comment period ended September 24, 2021. Twelve public comments were received on this Notice. AmeriCorps grouped the comments around issues raised and addressed them to the full extent possible in this revised information collection. Most of the comments focused on the data collection approach and tool, timeline for the data collection, usage of the data, safeguarding of data, assessment of burden, and organizational capacity to complete the tool. For comments related to revisions of the collection approach and updates to the tool, AmeriCorps has revised the diversity questions to better align with U.S. Census terminology and has revised definitions accordingly. For comments related to revisions to the collection timeline, AmeriCorps has not made a change, as it aims to create a baseline through this first data collection and therefore the most comprehensive and efficient time to collect is during the application process. In terms of questions related to data usage, AmeriCorps has refined the sections of the tool on purpose and usage of data. In terms of questions related to safeguarding, AmeriCorps updated language in the tool to confirm that it will be collecting data in the aggregate. The information requested does not include any types of personally identifiable information, and other than lawfully authorized requests, the information will not otherwise be disclosed to entities outside of AmeriCorps. For comments related to the assessment of burden for information collection, AmeriCorps estimated that the burden of entering

existing demographic data into the Diversity Questionnaire data collection tool is correctly estimated to be 30 minutes and does not warrant a revision. Finally, for comments related to organizational capacity, AmeriCorps believes that all organizations have the capacity to fill out the tool in a timely and responsive manner; instructions in the tool were updated to say that organizations should complete the form to the ''best of their ability.''

Title of Collection: AmeriCorps Diversity Questionnaire Form.

OMB Control Number: 3045–0187.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and Organizations and State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 3,500.

Total Estimated Number of Annual Burden Hours: 1,750.

Abstract: The information provided by prospective and current grantees and sponsors through the AmeriCorps Diversity Questionnaire Form will enable AmeriCorps to better understand the demographic characteristics of current grantees, potential grantees, and the people served by AmeriCorps programs. The aim is to further AmeriCorps' efforts to consider the diversity of communities and participants in its grantmaking and direct service activities and create programs that represent and serve the full diversity of the community/our country.

The information requested in the Diversity Questionnaire Form will be collected in the aggregate for each grantee, applicant for funding, and sponsor receiving an AmeriCorps resource. First, it will provide AmeriCorps with a deeper understanding of the demographics of grantee and sponsor organizations and people served by AmeriCorps programs. Second, AmeriCorps will take the data into account in its grantmaking and resource allocation decisions, particularly to better reach those who are underserved. Over the next 5 years, AmeriCorps aims to ensure that 40% of all those served by AmeriCorps members and AmeriCorps Seniors volunteers are people in poverty. (AmeriCorps uses ''people in poverty'' as its proxy measure for ''underserved,'' recognizing that data shows that a higher proportion of people in poverty are people of color and other minority populations.) Third, the data will enable AmeriCorps to better target training, technical assistance, and outreach to potential grantees and sponsors, in particular those who are new to AmeriCorps, with the goal of creating programs that represent and serve the full diversity of our nation's communities.

When it collects this data for the first time, AmeriCorps will request that the Diversity Questionnaire Form be filled by every current grantee and applicant for funding and resource allocation. Following this baseline, AmeriCorps expects this questionnaire to be included with grant renewal and new applications on an annual basis. Estimated time for completion of the form is less than 30 minutes, based on staff testing of the survey. Questions have been crafted for ease of reporting and efficient collection.

In AmeriCorps' grant making processes, the questionnaire will be submitted electronically as part of the grant application and guidance about the form will be part of an in-depth set of grant application instructions. Additionally, the form will be used to collect data from sponsor applicants for directly-managed programs such as AmeriCorps' National Civilian Community Corps (NCCC). Staff will be available to provide individualized assistance, if needed, to organizations filling out the form.

AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on 3/31/2022.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, verifying, processing, and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Dated: January 6, 2022.

Anna Mecagni,

Chief of Program Operations.

[FR Doc. 2022–00474 Filed 1–12–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2022–IES–1]

Request for Information on Effective Interventions To Improve Middle School Science Achievement and Mathematics Achievement in Grades 3 Through 5 for Students With Disabilities

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Request for information.

SUMMARY: The National Center for Education Evaluation and Regional Assistance (NCEE) at the U.S. Department of Education's (Department) Institute of Education Sciences (IES) is charged by Congress to identify and encourage the use of evidence-based practices in education. Through this request for information (RFI), NCEE seeks public input about the characteristics of middle school science and upper elementary mathematics interventions as well as information on publicly available research describing their efficacy. Feedback from developers of such interventions would be of particular value to the Department.

DATES: We must receive your comments by February 14, 2022.

ADDRESSES: Submit your response to this RFI through the Federal eRulemaking Portal. We will not accept submissions by postal mail, commercial mail, hand delivery, fax, or email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and

viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy for comments received from members of the public is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. We encourage, but do not require, that each respondent include his or her name, title, institution or affiliation, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if any.

FOR FURTHER INFORMATION CONTACT:

Matthew Soldner, Commissioner, National Center for Education Evaluation and Regional Assistance & Agency Evaluation Officer, Institute of Education Sciences, U.S. Department of Education, 400 Maryland Avenue SW, Room 4160, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–8385. Email: *Matthew.Soldner@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background:

As evidenced by recent results from the National Assessment of Educational Progress (NAEP), too many of the Nation's students struggle with building foundational skills in science (see *https://go.usa.gov/xehQC*) and math (see *https://go.usa.gov/xehQY*). The problem is particularly acute among student groups that education systems have historically underserved.

In NAEP's 2019 assessment of twelfth graders' science proficiency, 69 percent of Black students, 56 percent of Hispanic students, 58 percent of Native Hawaiian/Other Pacific Islander students, and 51 percent of American Indian/Alaska Native students were identified as ''Below NAEP Basic.'' On the same assessment, 75 percent of twelfth grade students with disabilities demonstrated proficiency ''Below NAEP Basic,'' a rate double that of their peers not identified with a disability. These results signal a need to intervene early in students' academic careers, with the aim of increasing the likelihood that students are scientifically literate by the time they leave high school.

For many students, mastery of foundational math skills is also a significant challenge. The success of students with disabilities is of particular concern. In 2017, 54 percent of fourth graders with disabilities scored ''Below NAEP Basic'' in math, compared to only 15 percent of students without disabilities. Students entering fourth grade with poor whole number knowledge are more likely to struggle in later grades than their peers with a better understanding,[1] [2] and it is in fourth grade where curricula increasingly focus on rational numbers and fractions.[3] Not developing proficiency in these domains has negative and long-term implications for students. In addition to being critical to life skills including personal finance, cooking, and healthcare, this knowledge is critical to later mathematical learning, including algebra.

As part of its continuing effort to respond to disruptions caused by the COVID–19 pandemic, IES plans to promote the advancement and testing of programs and products (interventions) that can improve students' proficiency in science and mathematics. We are particularly interested in (1) interventions that can improve middle grades students' science achievement, particularly among students in the lowest quartile of proficiency regardless of disability status; and (2) digital interventions that can improve the math proficiency of third to fifth grade students with or at risk of developing disabilities, with an emphasis on the domains of whole numbers, rational numbers, and fractions. Through this RFI, IES is seeking information from developers and program providers about relevant interventions. This includes interventions that developers and program providers believe are already wholly responsive to the needs identified above as well as those that could be responsive to these needs if modified slightly.

When responding to this RFI, developers or program providers intending to serve students ''at risk'' of developing a disability should clearly identify the disability or disability categories that proposed beneficiaries are at risk of developing and specific factors that place them at heightened risk. The determination may include, for example, factors used for moving children and youth to higher tiers in a Response-to-Intervention model. Factors based solely on general population characteristics, such as labeling a student ''at risk'' for disabilities because they are from low-income families or are English language learners, are not sufficient for this purpose.

This is a request for information only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, we are not seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. The documents and information submitted in response to this RFI will not be returned.

We will review every comment, and, as described above, electronic comments in response to this RFI will be publicly available on the Federal eRulemaking Portal at *www.regulations.gov.* Please note that IES will not directly respond to comments.

Solicitation of Comments

We invite developers or program providers with interventions relevant to improved achievement in (1) middle school science, or (2) upper elementary math with an emphasis on students with or at risk of developing a disability to share the following in their comments:

(1) The name of their intervention;

(2) The curricular focus of their intervention (*i.e.,* middle school science or upper elementary math);

(3) A brief description of the intervention, potentially including (a) its major components and pedagogical features, (b) its delivery modality (*e.g.,* face-to-face; via an online platform accessed through a browser or mobile app), (c) its intended duration and intensity (*e.g.,* 60 minutes, three times a week, for six weeks), and (d) the extent to which information on student progress is available for educators and family members/caretakers;

(4) The extent to which the intervention, as it is currently available, focuses on improving the proficiency of diverse groups of students, particularly

[1] Barbieri, C.A., Rodrigues, J., Dyson, N., & Jordan, N.C. (2020). Improving fraction understanding in sixth graders with mathematics difficulties: Effects of a number line approach combined with cognitive learning strategies. Journal of Educational Psychology, 112(3), 628.

[2] Namkung, J.M., Fuchs, L.S., & Koziol, N. (2018). Does initial learning about the meaning of fractions present similar challenges for students with and without adequate whole-number skill? Learning and Individual Differences, 61, 161–167. doi:10.1016/j.lindif.2017.11.018

[3] Siegler, R.S., Duncan, G.J., Davis-Kean, P.E., Duckworth, K., Claessens, A., Engel, M., Susperreguy, M.I., & Chen, M. (2012). Early predictors of high school mathematics achievement. Psychological Science, 23, 691–697. doi:10.1177/0956797612440101

(a) low-performing students and (b) students with or at risk of developing a disability;

(5) The extent to which the intervention is accessible to students with disabilities;

(6) If available, a link or links to publicly available information about the outcomes associated with the intervention's use, including third-party evaluations; and

(7) If available, a link or links to web pages that provide additional relevant detail about the intervention, such as information about its cost or its developers.

The Institute is committed to improving the public's access to, and the discoverability of, research on the efficacy of education interventions. In service of that goal, we invite developers who have commissioned studies of their interventions' efficacy and who hold copyright to those studies, or their authorized representatives, to consider depositing eligible content into ERIC: the Institute of Education Sciences' bibliographic and full-text database of education research (*https://eric.ed.gov/*). More information about submitting content to ERIC, including our selection policy and how to access the online submission portal, can be found at *https://eric.ed.gov/submit/.*

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.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2022–00627 Filed 1–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Route 66 Solar Energy Center, LLC	EG22–1–000
Cypress Creek Fund 7 Tenant, LLC	EG22 EG22–2–000
Cypress Creek Fund 6 Tenant, LLC	EG22 EG22–3–000
Cypress Creek Fund 5 Tenant, LLC	EG22 EG22–4–000
CCP–PL Lessee, LLC	EG22 EG22–5–000
Hecate Energy Highland LLC	EG22 EG22–6–000
EnerSmart Chula Vista BESS LLC	EG22 EG22–7–000
Sagebrush Line, LLC	EG22 EG22–8–000
PGR 2021 Lessee 2, LLC	EG22 EG22–9–000
Beulah Solar, LLC	EG22 EG22–10–000
Ellis Solar, LLC	EG22 EG22–11–000
King Creek Wind Farm 1 LLC	EG22 EG22–12–000
King Creek Wind Farm 2 LLC	EG22 EG22–13–000
Calhoun Solar Energy LLC	EG22 EG22–14–000
ENGIE 2020 ProjectCo-NH1 LLC	EG22 EG22–15–000
Dunns Bridge Solar Center, LLC	EG22 EG22–16–000
Jackson Generation, LLC	EG22 EG22–17–000
MPH AL Pierce, LLC	EG22 EG22–18–000

Take notice that during the month of December 2021, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a)(2021).

Dated: January 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00618 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–134–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Happytown Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Happytown Abandonment Project, proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to abandon pipelines and four-meter stations that have not been utilized in over 20 years and are not expected to be used in the future, all located in Pointe Coupée Parish, Louisiana.

The EA assesses the potential environmental effects of the abandonment activities of the Happytown Abandonment Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Happytown Abandonment Project includes the following facilities:

- Abandon in-place approximately 29.6 miles of 8-, 10-, and 12-inch diameter pipeline segments;
- abandon by removal approximately 0.8 miles of 8- and 10-inch diameter pipeline segments;
- abandon by removal the Courtney Happytown Meter Station and associated appurtenance;
- abandon by removal the Sugar Bowl Meter Station and associated appurtenance;
- abandon by removal the Sun Fordoche Meter Station and associated appurtenance; and
- abandon by removal the Oryx Energy Meter Station and associated appurtenance.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP21–134). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on February 7, 2022.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–134–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: January 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–00569 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–721–000]

Kennebec Lumber Company; 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 Kennebec Lumber Company'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 January 27, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: January 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00617 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–476–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Section 22 Adjustment to be effective 2/1/2022.
Filed Date: 1/5/22.
Accession Number: 20220105–5173.
Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: RP22–477–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: Rate Schedule S–2 OFO Flow Through Refund to be effective N/A.
Filed Date: 1/7/22.
Accession Number: 20220107–5028.
Comment Date: 5 p.m. ET 1/19/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00619 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Part 284 Natural Gas Pipeline Rate filings:

Filings Instituting Proceedings

Docket Numbers: RP22–473–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 1–4–22 to be effective 1/1/2022.
Filed Date: 1/4/22.
Accession Number: 20220104–5078.
Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: RP22–474–000.
Applicants: Dominion Energy Questar Pipeline, LLC.
Description: § 4(d) Rate Filing: Statement of Negotiated Rates V 19.0.0, Ovintiv TSA No. 6742 to be effective 1/1/2022.
Filed Date: 1/4/22.
Accession Number: 20220104–5114.
Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: RP22–475–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 1–5–22 to be effective 1/5/2022.
Filed Date: 1/5/22.
Accession Number: 20220105–5043.
Comment Date: 5 p.m. ET 1/18/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://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: January 5, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00499 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–11–000]

Reliability Technical Conference; Notice Inviting Post-Technical Conference Comments

On Thursday, September 30, 2021, the Federal Energy Regulatory Commission (Commission) staff convened its annual Commissioner-led Reliability Technical Conference to discuss policy issues related to the reliability of the Bulk-Power System.

All interested persons are invited to file post-technical conference comments to address the questions raised below and, if they wish, any other issues raised during the technical conference. Commenters need not answer all of the questions, but commenters are encouraged to organize responses using the numbering and order in the below

questions. Commenters are also invited to reference material previously filed in this docket but are encouraged to avoid repetition or replication of their previous comments. Comments must be submitted on or before 45 days from the date of this Notice.

Comments may be filed electronically via the internet.[1] Instructions are available on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact:

Lodie White (Technical Information), Office of Energy Reliability, (202) 502–8453, *Lodie.White@ferc.gov*

Milena Yordanova (Legal Information), Office of the General Counsel, (202) 502–6194, *Milena.Yordanova@ferc.gov*

Dated: January 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00615 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–34–000.
Applicants: Consolidated Water Power Company, BillerudKorsnäs AB.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Consolidated Water Power Company, et al.
Filed Date: 1/7/22.
Accession Number: 20220107–5179.
Comment Date: 5 p.m. ET 1/28/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–36–000.
Applicants: Lancaster Area Battery Storage, LLC.
Description: Lancaster Area Battery Storage, LLC. submits Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/27/21.
Accession Number: 20211227–5299.
Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: EG22–37–000.
Applicants: CPV Maple Hill Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CPV Maple Hill Solar, LLC.
Filed Date: 1/7/22.
Accession Number: 20220107–5077.
Comment Date: 5 p.m. ET 1/28/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1106–002.
Applicants: Kestrel Acquisition, LLC.
Description: Response to December 7, 2021 Deficiency Letter of Kestrel Acquisition, LLC.
Filed Date: 1/6/22.
Accession Number: 20220106–5228.
Comment Date: 5 p.m. ET 1/27/22.

Docket Numbers: ER21–645–000.
Applicants: TransWest Express LLC.
Description: TransWest Express LLC submits Post-Open Solicitation Compliance Filing and Request for Expedited Action.
Filed Date: 12/3/21.
Accession Number: 20211203–5212.
Comment Date: 5 p.m. ET 1/21/22.

Docket Numbers: ER22–434–000.
Applicants: Altop Energy Trading LLC.
Description: Supplement to November 19, 2021 Altop Energy Trading LLC tariff filing.
Filed Date: 1/6/22.
Accession Number: 20220106–5178.
Comment Date: 5 p.m. ET 1/20/22.

Docket Numbers: ER22–434–000.
Applicants: Altop Energy Trading LLC.
Description: Supplement to November 18, 2021 Altop Energy Trading LLC tariff filing.
Filed Date: 1/4/22.
Accession Number: 20220104–5198.
Comment Date: 5 p.m. ET 1/18/22.

Docket Numbers: ER22–781–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3878 States Edge Wind I GIA to be effective 12/9/2021.
Filed Date: 1/7/22.
Accession Number: 20220107–5024.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–782–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3879 States Edge Wind I GIA to be effective 12/9/2021.
Filed Date: 1/7/22.
Accession Number: 20220107–5025.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–783–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3880 States Edge Wind I GIA to be effective 12/9/2021.
Filed Date: 1/7/22.
Accession Number: 20220107–5026.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–784–000.
Applicants: CPV Maple Hill Solar, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 3/9/2022.
Filed Date: 1/7/22.
Accession Number: 20220107–5067.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–785–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement No. 6278; Queue No. AD2–048 to be effective 12/8/2021.
Filed Date: 1/7/22.
Accession Number: 20220107–5073.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–786–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA, SA No. 6280 and Cancellation of IISA, SA No. 6124; Queue No. AD1–101 to be effective 12/10/2021.
Filed Date: 1/7/22.
Accession Number: 20220107–5082.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–787–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–01–07_SA 3408 Ameren Illinois-Glacier Sands Wind 2nd Rev GIA (J1055 J1454) to be effective 12/21/2021.
Filed Date: 1/7/22.
Accession Number: 20220107–5085.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–788–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: Dec. 2021 RTEP, 30-Day Comment Period Requested to be effective 4/7/2022.
Filed Date: 1/7/22.
Accession Number: 20220107–5115.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–789–000.

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[1] *See* 18 CFR 385.2001(a)(1)(iii) (2021).

Applicants: CPV Fairview, LLC.
Description: CPV Fairview, LLC submits Request for Limited One-Time Prospective Waiver with Expedited Consideration.
Filed Date: 1/3/22.
Accession Number: 20220103–5495.
Comment Date: 5 p.m. ET 1/24/22.

Docket Numbers: ER22–790–000.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Amendment: Termination of Caballero CA Storage E&P Agreement (SA 2100 EP–28) to be effective 3/9/2022.
Filed Date: 1/7/22.
Accession Number: 20220107–5159.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–791–000.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Amendment: Termination of Chalan CA Solar Storage E&P Agreement (SA 2100 EP–29) to be effective 3/9/2022.
Filed Date: 1/7/22.
Accession Number: 20220107–5160.
Comment Date: 5 p.m. ET 1/28/22.

Docket Numbers: ER22–792–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–CEPCI NITSA SA No. 447 to be effective 2/1/2022.
Filed Date: 1/7/22.
Accession Number: 20220107–5198.
Comment Date: 5 p.m. ET 1/28/22.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF22–358–000.
Applicants: DCO-Franklin, LLC.
Description: Form 556 of DCO-Franklin, LLC.
Filed Date: 1/6/22.
Accession Number: 20220106–5213.
Comment Date: 5 p.m. ET 1/27/22.

Docket Numbers: QF22–364–000.
Applicants: Bloom Energy Corporation.
Description: Form 556 of Bloom Energy Corporation [4095 US Highway 1].
Filed Date: 1/7/22.
Accession Number: 20220107–5080.
Comment Date: 5 p.m. ET 1/28/22.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: January 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–00614 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM18–9–008]

Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators; Notice of Request for Technical Conference

Take notice that on December 22, 2021, Voltus, Inc., pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2021), filed a petition requesting that the Commission hold a technical conference regarding Order No. 2222.[1] Voltus requests that the Commission convene a technical conference to collectively discuss key issues arising from the Order No. 2222 compliance proposals of the Regional Transmission Organizations and Independent System Operators, and subsequently provide direction to stakeholders either informally or via the issuance of a policy statement. Voltus proposes a technical conference occur in February or March 2022, after California Independent System Operator Corporation, New York Independent System Operator, Inc., PJM Interconnection, L.L.C., and ISO New England Inc. have filed their Order No. 2222 compliance proposals, but before Southwest Power Pool, Inc. and Midcontinent Independent System Operator, Inc. file their proposals in April 2022.

This notice does not change the existing deadlines for submission of Order No. 2222 compliance filings.

Any person that wishes to comment on Voltus's petition in this proceeding must file comments in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 (2021). Comments will be considered by the Commission in determining the appropriate action to be taken. Comments must be filed on or before the comment date.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons with an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 7, 2022.

Dated: January 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–00570 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9236–01–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Research and Development (ORD), Environmental Protection Agency (EPA).

[1] *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g,* Order No. 2222–A, 174 FERC ¶ 61,197, *order on reh'g,* Order No. 2222–B, 175 FERC ¶ 61,227 (2021).

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD) is giving notice that it proposes to modify a system of records pursuant to the provisions of the Privacy Act of 1974. This system will use SORN EPA–38. EPA–38 will be modified to change the name from Invention Reports to Federal Technology Transfer Act (FTTA) and Inventory for Patent Inventions (IfPI). Additionally, EPA is modifying the location, ownership, and categories of records in the FTTA and IfPI system. The purpose of the system is to provide the opportunity for the knowledge and expertise within the Agency to be shared with outside entities through collaborative agreements and licensing. Records are maintained for the purpose of documenting inventions made under EPA sponsorship, including filing patent applications, determining rights to inventions, licensing inventions, and ascertaining inventorship and priority of invention. Unless noted in this modification, all exemptions and provisions included in the previously published system of record notice for Invention Reports will transfer to the modified system of record notice for Federal Technology Transfer Act (FTTA) and Inventory for Patent Inventions (IfPI).

DATES: Persons wishing to comment on this system of records notice must do so by February 14, 2022. New or modified routine uses for this system of records will be effective February 14, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2021–0811, 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. 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–ORD–2021–0811. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be 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: Carmen Krieger, Acquisition Specialist, Office of Resource Management, Office of Research and Development, Environmental Protection Agency, Ronald Reagan Building, 1300 Pennsylvania Ave. NW, Washington, DC 20460, (202) 564–0396, *krieger.carmen@epa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the system is to provide the opportunity for the knowledge and expertise within the Agency to be shared with outside entities through collaborative agreements and licensing. The FTTA and IfPI system houses FTTA mechanisms: Cooperative Research and Development Agreements (CRADAs), Materials CRADAs (MCRADAs), Materials Transfer Agreements (MTAs), and Non-Disclosure Agreements (NDAs). For each agreement, the system tracks general information for the partner and EPA. We have a description of the project, potential products, associations, budgets. The system also tracks the status and workflows of each agreement. IfPI contains the Employee Reports of Invention (EROIs) database, which tracks License and Patent information. The License information is identical to how EPA tracks FTTA agreements. The Patent information includes our inventors and relative information regarding new inventions, which is contained in EROIs.

SYSTEM NAME AND NUMBER:

Federal Technology Transfer Act (FTTA) and Inventory for Patent Inventions (IfPI) database, *EPA–38.*

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This is a cloud system. Data is stored on the Salesforce servers. The FTTA and IfPI database is stored and run in the Salesforce GovCloud (San Francisco, CA). EROIs are saved electronically to servers located at EPA National Computer Center (NCC), 109 TW Alexander Drive, Research Triangle Park, Durham, NC 27711. Information may also be stored within a government-

certified cloud, implemented and overseen by the Agency's Chief Information Officer (CIO). Hard copy file records of the FTTA and IfPI system are housed in a locked storage room at the Ronald Reagan Building, 1300 Pennsylvania Ave., Washington, DC 20460.

SYSTEM MANAGER:

Kathleen Graham, Program Analyst, Office of Resource Management, Office of Research and Development, Environmental Protection Agency, 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6137, *graham.kathleen@epa.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 3710, Utilization of Federal Technology. 15 U.S.C. 3710a, Cooperative Research and Development Agreements. 35 U.S.C. chapter 18, Patent Rights in Inventions Made with Federal Assistance. 37 CFR parts 401, 404, and 501.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to provide the opportunity for the knowledge and expertise within the Agency to be shared with outside entities through collaborative agreements and licensing. Records are maintained for the purpose of documenting inventions made under EPA sponsorship, including filing patent applications, determining rights to inventions, licensing inventions, and ascertaining inventorship and priority of invention. The Federal Technology Transfer Act (FTTA) Program (15 U.S.C. 3710) provides the opportunity for the knowledge and expertise within the Agency to be shared with outside entities through collaborative agreements and licensing. The system houses FTTA mechanisms: Cooperative Research and Development Agreements (CRADAs), Materials CRADAs (MCRADAs), Materials Transfer Agreements (MTAs), Non-Disclosure Agreements (NDAs), and License Agreements. For each agreement, the system tracks general information for the partner and EPA. We have a description of the project, potential products, associations, and budgets. The system also tracks the status and workflows of each agreement.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

FTTA Contacts, which are EPA employees within ORD; Invention report submitters and their supervisors; other persons with knowledge of the invention or expertise in the particular area of the invention; EPA Patent Counsel; EPA contractors who have confirmed the uniqueness of the invention, prepared a patent application on the invention, and/or otherwise performed work relating to a patent application; and the United States and foreign patent offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agreements/Licenses: Name, business email address, business telephone number, work address. Patents: Invention reports (name and address), patent applications (name and address) until application is published, patents (name, city, and state), patent assignments (name), procurement requests (name and address), and other documents relevant to inventions.

RECORD SOURCE CATEGORIES:

EPA employees and contractors and external partners. Records are entered into the system by EPA employees.

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 (*86 FR 62527*): A, D, E, F, G, H, I, K, L, and M.

Additional routine uses that apply to this system are:

1. To scientific personnel who possess the expertise to understand the invention and evaluate its importance to the Government and/or the public.

2. To contract patent counsel and their employees retained by the Agency for patent searching and the preparation and prosecution of United States and foreign patent applications.

3. To technology assistance personnel, technology evaluators, technology finders, and prospective licensees who may further make the invention available to the public through evaluation, promotion, sale, use, or publication.

4. To parties, such as supervisors of inventors, whom we contact to determine ownership rights, and to people contacting us to determine the Government's ownership.

5. To the United States and foreign Patent and Trademark Offices when we file U.S. and foreign patent applications.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained electronically on the EPA Salesforce GovCloud. Backups are stored in the NCC for 90 days and also backed up to tape per NCC backup policies.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The FTTA and IfPI database retrieves information by inventor's name, case identification number, patent application number, and patent number. The FTTA data has list views that can be filtered, depending on user preference, to present data. The system also includes a search box where a user can search by file number, case number, or business name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are maintained for ten (10) years after completion or termination of action on the disclosed invention, such as issuance of a patent. They are destroyed ten (10) years after file closure. The Records Schedule is 1003b.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in the FTTA and IfPI system 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: FTTA and IfPI follow procedures set out by NIST 800–53 and EPA's Chief Information Officer (CIO) Security Procedures including that 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: Only Office of Research and Development FTTA Core team members have access to the combination code to enter the records room. Office of Research and Development FTTA Core team members have elevated privileges to access system, approve workflow, use communication features (*e.g.,* upload files, email, and task features), and ad-hoc reporting. Authorized users in the Office of General Counsel have the same access, but cannot delete records. Lab Contacts have view-only privileges, but are able to use communication features.

3. Physical Safeguards: All servers are maintained in secure, access-controlled areas or buildings. Paper records are maintained in locked file cabinets in a locked room in an access-controlled building.

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 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 Avenue NW, Washington, DC 20460, *privacy@epa.gov*.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Federal Register Volume 67, Number 36 (Friday, February 22, 2002).

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2022–00628 Filed 1–12–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0145; –0161; –0171]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0145; –0161 and –0171).

DATES: Comments must be submitted on or before March 14, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/index.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Notice Regarding Unauthorized Access to Customer Information.

OMB Number: 3064–0145.

Form Numbers: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0145]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Hours per response	Annual burden (hours)
Implementation (One Time)					
Develop Policies and Procedures for Response Program.	Recordkeeping (Required).	1	10	24	240
Ongoing					
Notice Regarding Unauthorized Access to Customer Information.	Third Party Disclosure (Required).	On occasion	315	36	11,340
Total Annual Burden (Hours)					11,580

Source: FDIC.

General Description of Collection: The Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice describes the federal banking agencies' expectations regarding a response program, including customer notification procedures, that a financial institution should develop and apply under the circumstances described in the Guidance to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The Guidance advises financial institutions when and how they might: (1) Develop notices to customers; (2) in certain circumstances defined in the Guidance, determine which customers should receive the notices; and (3) send the notices to customers.

There is no change in the methodology or substance of this information collection. The increase in total estimated annual burden from 11,340 hours in 2019 to 11,580 hours currently is due to economic factors as

reflected in the increase in estimated number of respondents.

2. *Title:* Furnisher Information Accuracy and Integrity (FACTA 312).
OMB Number: 3064–0161.
Form Number: None.
Affected Public: State nonmember banks.
Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0161]

Information collection description	Type of burden (obligation to respond)	Number of responses	Number of respondents	Hours per response	Annual burden (hours)
Procedures to Enhance the Accuracy and Integrity of Information furnished to Consumer Reporting Agencies under Section 312 of the Fair and Accurate Credit Transaction Act.	Recordkeeping (Required).	1	3,140	40	125,600
Distribution of Notices in Response to Direct Disputes.	Third Party Disclosure (Required).	46	3,140	0.23	33,221
Total Annual Burden (Hours)					158,821

General Description of Collection: Sec. 312 of the Fair and Accurate Credit Transaction Act of 2003 (FACT Act) requires the FDIC to: Issue guidelines for furnishers regarding the accuracy and integrity of the information about consumers furnished to consumer reporting agencies; prescribe regulations requiring furnishers to establish reasonable policies/procedures to implement the guidelines; and issue regulations identifying the circumstances where a furnisher must reinvestigate a dispute about the accuracy of information in a consumer report based on a direct request from a consumer.

There is no change in the method or substance of the collection. The overall increase in burden hours is the result of economic fluctuation. In particular, the number of respondents has increased while the hours per response and frequency of responses have remained the same.

3. *Title:* Registration of Mortgage Loan Originators.
OMB Number: 3064–0171.
Form Number: None.
Affected Public: FDIC Supervised Institutions and Employee Mortgage Loan Originators.
Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0171]

Information collection description	Type of burden	Frequency of response	Estimated number of respondents	Estimated number of responses per respondent	Estimated time per response (hours)	Estimated annual burden (hours)
Financial Institution Policies and Procedures for Ensuring Employee-Mortgage Loan Originator Compliance With S.A.F.E. Act Requirements—New Entrant.	Recordkeeping	One-Time	7	1	20	140
Financial Institution Policies and Procedures for Ensuring Employee-Mortgage Loan Originator Compliance With S.A.F.E. Act Requirements—Ongoing.	Recordkeeping	Annual	3,091	1	1	3,091
Financial Institution Procedures to Track and Monitor Compliance with S.A.F.E. Act Compliance—New Entrant.	Recordkeeping	One-Time	7	1	60	420
Financial Institution Procedures to Track and Monitor Compliance with S.A.F.E. Act Compliance—Ongoing.	Recordkeeping	Annual	3,091	1	1	3,091
Financial Institution Procedures for the Collection and Maintenance of Employee Mortgage Loan Originator's Criminal History Background Reports—New Entrant.	Recordkeeping	One-Time	7	1	20	140
Financial Institution Procedures for the Collection and Maintenance of Employee Mortgage Loan Originator's Criminal History Background Reports—Ongoing.	Recordkeeping	Annual	3,091	1	1	3,091
Financial Institution Procedures for Public Disclosure of Mortgage Loan Originator's Unique Identifier—New Entrant.	Third Party Disclosure.	One-Time	7	1	25	175

SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

[OMB No. 3064–0171]

Information collection description	Type of burden	Frequency of response	Estimated number of respondents	Estimated number of responses per respondent	Estimated time per response (hours)	Estimated annual burden (hours)
Financial Institution Procedures for Public Disclosure of Mortgage Loan Originator's Unique Identifier—Ongoing.	Third Party Disclosure.	Annual	3,091	1	1	3,091
Financial Institution Information Reporting to Registry.	Reporting	On Occasion	3,098	1	1	3,098
Mortgage Loan Originator Initial Registration Reporting and Authorization Requirements.	Reporting	One-Time	5,257	1	.25	1,314
Mortgage Loan Originator Registration Updates Upon Change in Circumstances.	Reporting	On Occasion	40,015	1	.25	10,004
Financial Institution Procedures for the Collection of Employee Mortgage Loan Originator's Fingerprints.	Recordkeeping	On Occasion	3,098	1	4	12,392
Mortgage Loan Originator Procedures for Disclosure to Consumers of Unique Identifier.	Third Party Disclosure.	On Occasion	45,272	1	1	45,272
Mortgage Loan Originator Annual Renewal Registration Reporting and Authorization Requirements.	Reporting	On Occasion	40,015	1	.25	10,004
Total Annual Burden						95,323

General Description of Collection: This information collection implements the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requirement that employees of Federally-regulated institutions who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and establishes national licensing and registration requirements. It also directs Federally-regulated institutions to have written policies and procedures in place to ensure that their employees who perform mortgage loan originations comply with the registration and other SAFE Act requirements.

There is no change in the method or substance of the collection. The overall decrease in burden hours is the result of economic fluctuation. In particular, the number of respondents and time per response have decreased while the frequency of responses have remained the same.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 10, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–00574 Filed 1–12–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 10, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Georgia Banking Company, Inc., Atlanta, Georgia;* to merge with Peoples BankTrust, Inc., and thereby indirectly acquire its subsidiary, Peoples Bank & Trust, both of Buford, Georgia.

Board of Governors of the Federal Reserve System, January 6, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–00447 Filed 1–12–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 28, 2022.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *Dominik Mjartan and Georgia M. Mjartan, both of Columbia, South Carolina;* to acquire voting shares of Optus Financial Corporation, and thereby indirectly acquire voting shares of Optus Bank, both of Columbia, South Carolina.

Board of Governors of the Federal Reserve System, January 10, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–00593 Filed 1–12–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0001]

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Advisory Committee to the Director, Centers for Disease Control and Prevention (ACD, CDC). This meeting is open to the public. Time will be available for public comment. The meeting will be webcast live via the World Wide Web.

DATES: The meeting will be held on February 1, 2022, from 11:00 a.m. to 4:30 p.m., EST (times subject to change). The public may submit written comments from January 13, 2022 through January 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. CDC–2022–0001 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket number CDC–2022–0001, c/o Kerry Caudwell, MPA, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–10, Atlanta, Georgia 30329–4027.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

Written public comments submitted up to 72 hours prior to the ACD meeting will be provided to ACD members before the meeting.

Written comments received in advance of the meeting will be included in the official record of the meeting.

FOR FURTHER INFORMATION CONTACT: Kerry Caudwell, MPA, Centers for Disease Control and Prevention, Office of the Chief of Staff, 1600 Clifton Road NE, MS H21–10, Atlanta, Georgia 30329–4027, Telephone: (404) 639–7000; Email Address: *ACDirector@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Advisory Committee to the Director, CDC, shall advise the Secretary, HHS, and the Director, CDC, on policy and broad strategies that will enable CDC to fulfill its mission of protecting health through health promotion, prevention, and preparedness. The committee recommends ways to prioritize CDC's activities, improve results, and address health disparities. It also provides guidance to help CDC work more effectively with its various private and public sector constituents to make health protection a practical reality.

Matters To Be Considered: The agenda will include discussions on CDC's current work and priorities as they relate to: (1) Health equity and (2) public health system infrastructure issues regarding data modernization and/or support for the public health workforce. Agenda items are subject to change as priorities dictate.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: The docket will be opened to receive written comments on January 13, 2022 through January 28, 2022.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the February 1, 2022 ACD meeting must submit a request by visiting *https://www.cdc.gov/about/advisory-committee-director/meetings* no later than 11:59 p.m., EST, January 24, 2022, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by January 28, 2022. To accommodate the significant interest in participation in the oral public comment session of ACD meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–00565 Filed 1–12–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Head Start Program Information Report (OMB #0970–0427)

AGENCY: Office of Head Start, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families' (ACF) Office of Head Start (OHS) is requesting a 3-year extension of the Head Start Program Information Report (PIR), Monthly Enrollment reporting instrument, and Center Locations and Contacts instrument (OMB #0970–0427, expiration 4/30/2022). OHS has made updates to these instruments, as described below.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OHS is requesting an extension, with changes, of the Head Start PIR information collection authority. The following instruments are included in this information collection: (1) PIR, (2) Monthly Enrollment, and (3) Center Locations and Contacts. The PIR is used for federal program management purposes including to promote decision-making using data, is a major source of information used to respond to Congressional and public inquiries about Head Start programs, and is used often by researchers. Monthly enrollment reporting supports oversight activities related to promoting full enrollment of programs. Center locations and contact reporting is used to help parents locate a program in their community. In general, these information collections together create key administrative datasets to support administration of the program. The proposed changes include new questions on the PIR to collect information on collaboration activities with Part C agencies and the average benefits provided to certain education staff as part of their compensation. Additionally, new questions were added to the centers reporting to capture participation in a local or state Quality Rating Improvement System and licensing status for each center. Lastly, minor changes were made to these instruments for clarification purposes.

Respondents: Head Start Grant Recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Head Start PIR	1,600	2.25	1	3,600
Monthly Enrollment	1,600	27	0.05	2,160
Center Locations and Contacts	1,600	15	0.25	6,000

Estimated Total Annual Burden Hours: 11,760.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9801 *et seq.*

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–00502 Filed 1–12–22; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1302]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Food Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Agency's regulations that require registration for domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

DATES: Submit either electronic or written comments on the collection of information by March 14, 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 March 14, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 14, 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–2021–N–1302 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Food Facilities.'' 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: 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.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Food Facilities

OMB Control Number 0910–0502—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), to require, among other things, domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA. Sections 1.230 to 1.235 of our regulations (21 CFR 1.230 to 1.235) set forth the requirements for the registration of food facilities. Information provided to us under these regulations helps us to quickly notify the facilities that might be affected by a deliberate or accidental contamination of the food supply. In addition, data collected through registration is used to support FDA enforcement activities and to screen imported food shipments.

Advance notice of imported food allows FDA, with the support of the Bureau of Customs and Border Protection, to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies. If a facility is not registered or the registration for a facility is not updated when necessary, we may not be able to contact the facility and may not be able to target import inspections effectively in case of a known or potential threat to the food supply or other food-related emergency, putting consumers at risk of consuming hazardous food products that could cause serious adverse health consequences or death.

To assist respondents of the information collection we developed the following forms. Each facility that manufactures, processes, packs, or holds food for human or animal consumption in the United States must register with FDA using Form FDA 3537 entitled ''Food Facility Registration'' (§ 1.231), unless exempt under 21 CFR 1.226 from the requirement to register. To cancel a registration, respondents must use Form FDA 3537a entitled ''Cancellation of Food Facility Registration'' (§ 1.235). The terms ''Form FDA 3537'' and ''Form FDA 3537a'' refer to both the paper version of each form and the electronic system known as the Food Facility Registration Module, which is available at *https://www.access.fda.gov.* Registrations, updates, and cancellations are required to be submitted electronically. Domestic facilities are required to register whether or not food from the facility enters interstate commerce. Foreign facilities that manufacture, process, pack, or hold food also are required to register unless food from that facility undergoes further processing (including packaging) by another foreign facility outside the United States. However, if the further manufacturing/processing conducted by the subsequent facility consists of adding labeling or any similar activity of a de minimis nature, the former facility is required to register. In addition to the initial registration requirements, a facility is required to submit timely updates within 60 days of a change to any required information on its registration form, using Form FDA 3537 (§ 1.234), and to cancel its registration when the facility ceases to operate or is sold to new owners or ceases to manufacture, process, pack, or hold food for consumption in the United States, using Form FDA 3537a (§ 1.235).

Registration is one of several tools under the Bioterrorism Act that enables us to act quickly in responding to a threatened or actual bioterrorist attack on the U.S. food supply or other food-related emergency. Further, in the event of an outbreak of foodborne illness, the information provided helps us determine the source and cause of the event and enables us to quickly notify food facilities that might be affected by an outbreak, terrorist attack, or other emergency. Finally, the registration requirements enable us to quickly identify and remove from commerce an article of food for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals.

Description of Respondents: Respondents to this collection of information are owners, operators, or agents in charge of domestic or foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total
New domestic facility registration; 1.230–1.233	9,795	1	9,795	2.7	26,447
New foreign facility registration; 1.230–1.233	13,697	1	13,697	8.7	119,164
Updates; 1.234	53,836	1	53,836	1.2	64,603
Cancellations; 1.235	6,390	1	6,390	1	6,390
Biennial renewals; 1.235	97,883	1	97,883	0.38	37,196
3rd party registration verification	41,256	1	41,256	0.25	10,314
U.S. Agent verification	57,070	1	57,070	0.25	14,268
Total			279,927		278,382

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: January 4, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–00561 Filed 1–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0414]

Agency Information Collection Activities; Proposed Collection; Comment Request; Manufactured Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Manufactured Food Regulatory Program Standards.

DATES: Submit either electronic or written comments on the collection of information by March 14, 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 March 14, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 14, 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–2010–N–0414 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Manufactured Food Regulatory Program Standards.'' 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: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Manufactured Food Regulatory Program Standards

OMB Control Number 0910–0601—Extension

This information collection supports FDA's ''Manufactured Food Regulatory Program Standards'' (2019) (*https://www.fda.gov/media/131392/download*). We recommend that States use these program standards as the framework to design and manage their manufactured food programs. There are 44 State programs currently enrolled in the Manufactured Food Regulatory Program Standards (MFRPS) under cooperative agreements.

The goal of the MFRPS is to implement a nationally integrated, risk-based, food safety system focused on protecting public health. The MFRPS establish a uniform basis for measuring and improving the performance of prevention, intervention, and response activities of manufactured food regulatory programs in the United States. The development and implementation of the standards will help Federal and State programs better direct their regulatory activities toward reducing foodborne illness. For more information we invite you to visit our website at: *https://www.fda.gov/federal-state-local-tribal-and-territorial-officials/regulatory-program-standards/manufactured-food-regulatory-program-standards-mfrps.*

FDA recommends that a State program enrolled in the MFRPS use the worksheets and forms contained in the standards; however, alternate forms that are equivalent may be used. The State program maintains documentation (guidance, procedures, documents, and forms) required by the 10 standards, which must be current and fit for use. In the first year of implementing the program standards, the State program conducts a baseline self-assessment of the documentation to determine if it meets the elements of each standard. The State program must participate in additional verification audits in subsequent years. After 5 years, FDA will conduct a comprehensive program audit of the documentation. As part of the program audit, the auditor reviews the records and supporting documents required by the criteria in each standard to determine if the self-assessment and improvement plan accurately reflect the State program's level of conformance with each of the standards. If the State program fails to meet all program elements and documentation requirements of a standard, it develops a strategic plan which includes the following: (1) The individual element of documentation requirement of the standard that was not met, (2) improvements needed to meet the program element or documentation requirement of the standard, and (3) projected completion dates for each task.

Description of Respondents: Respondents are State Departments of Agriculture or Health enrolled in the MFRPS (State Governments).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
State Governments; Development and reporting of data consistent with MFRPS	44	1	44	569	25,036

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondent; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
State Governments; Maintenance of data records consistent with MFRPS	44	10	440	40	17,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We have adjusted the number of respondents to the information collection to reflect the enrollment of an additional State since our last evaluation.

Dated: January 6, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–00559 Filed 1–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0973]

Revocation of Three Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Becton, Dickinson & Company (BD) for the BioGX SARS–CoV–2 Reagents for BD MAX System, Boston Medical Center for the BMC–CReM COVID–19 Test, and Akron Children's Hospital for the Akron Children's Hospital SARS–CoV–2 Assay. FDA revoked these Authorizations on December 8, 2021, under the Federal Food, Drug, and

Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorizations for the BioGX SARS–CoV–2 Reagents for BD MAX System, BMC–CReM COVID–19 Test, and Akron Children's Hospital SARS–CoV–2 Assay are revoked as of December 8, 2021.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On April 2, 2020, FDA issued an EUA to BD for the BioGX SARS–CoV–2 Reagents for BD MAX System, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on June 5, 2020 (85 FR 34638), as required by section 564(h)(1) of the FD&C Act. On July 10, 2020, FDA issued an EUA to Boston Medical Center for the BMC–CReM COVID–19 Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On September 29, 2020, FDA issued an EUA to Akron Children's Hospital for the Akron Children's Hospital SARS–CoV–2 Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21749), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Requests

On December 3, 2021, FDA received a request from BD for the revocation of, and on December 8, 2021, FDA revoked, the Authorization for the BioGX SARS–CoV–2 Reagents for BD MAX System. Because BD notified FDA that BD discontinued the sale of the authorized product and requested FDA revoke the Authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization. On October 4, 2021 (and reconfirmed December 6, 2021), FDA received a request from Boston Medical Center for the revocation of, and on December 8, 2021, FDA revoked, the Authorization for the BMC–CReM COVID–19 Test. Because Boston Medical Center notified FDA that the BMC–CReM COVID–19 Test is no longer performed pursuant to the EUA and requested FDA withdraw the Authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization. On December 3, 2021, FDA received a request from Akron Children's Hospital for the revocation of, and on December 8, 2021, FDA revoked, the Authorization for the Akron Children's Hospital SARS–CoV–2 Assay. Because Akron Children's Hospital notified FDA that it stopped performing the Akron Children's Hospital SARS–CoV–2 Assay and requested that FDA revoke the Authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/.*

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs for BD's BioGX SARS–CoV–2 Reagents for BD MAX System, Boston Medical Center's BMC–CReM COVID–19 Test, and Akron Children's Hospital's Akron Children's Hospital SARS–CoV–2 Assay. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

December 8, 2021

Colton Muraira, J.D.
Staff Regulatory Affairs Specialist
Becton, Dickinson & Company (BD)
7 Loveton Circle
Sparks, MD 21152
Re: Revocation of EUA200098

Dear Colton Muraira:

This letter is in response to Becton, Dickinson & Company's (BD's) request received December 3, 2021, that the U.S. Food and Drug Administration (FDA) revoke the Emergency Use Authorization (EUA200098) for the BioGX SARS-CoV-2 Reagents for BD MAX System issued on April 2, 2020, and amended on April 7, 2020, May 29, 2020, September 25, 2020 and September 23, 2021. BD indicated that to simplify and focus their BD MAX Portfolio, BD made the decision to discontinue the sale of the authorized product.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because BD has notified FDA that BD discontinued the sale of the authorized product and requests FDA revoke the authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200098 for the BioGX SARS-CoV-2 Reagents for BD MAX System, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the BioGX SARS-CoV-2 Reagents for BD MAX System is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

December 8, 2021

Chris Andry, MPhil, Ph.D.
Professor and Chair
Department of Pathology & Laboratory Medicine
Boston University School of Medicine
Chief of Pathology & Laboratory Medicine
Boston Medical Center
670 Albany Street, 7th Floor, Room 736
Boston, MA 02118
Re: Revocation of EUA201811

Dear Dr. Andry:

This letter is in response to Boston Medical Center's request received October 4, 2021, and reconfirmed December 6, 2021, that the U.S. Food and Drug Administration (FDA) withdraw the Emergency Use Authorization (EUA201811) for the BMC-CReM COVID-19 Test issued on July 10, 2020, and amended on September 25, 2020, and September 23, 2021. Boston Medical Center confirmed that the BMC-CReM COVID-19 Test is no longer performed pursuant to the EUA.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Boston Medical Center has notified FDA that the BMC-CReM COVID-19 Test is no longer performed pursuant to the EUA and requests FDA withdraw the authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA201811 for the BMC-CReM COVID-19 Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the BMC-CReM COVID-19 Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

December 8, 2021

Ilka Warshawsky, M.D., Ph.D.
Director, Molecular Diagnostics Laboratory
Akron Children's Hospital
One Perkins Square
Akron, OH 44308
Re: Revocation of EUA202545

Dear Dr. Warshawsky:

This letter is in response to Akron Children's Hospital's request received December 3, 2021, that the U.S. Food and Drug Administration (FDA) revoke the Emergency Use Authorization (EUA202545) for the Akron Children's Hospital SARS-CoV-2 Assay issued on September 29, 2020 and amended on September 23, 2021. Akron Children's Hospital confirmed that it stopped performing the Akron Children's Hospital SARS-CoV-2 Assay, having implemented a number of additional SARS-CoV-2 molecular assays which have received EUA.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Akron Children's Hospital has notified FDA that it stopped performing the Akron Children's Hospital SARS-CoV-2 Assay and requests FDA revoke the authorization, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202545 for the Akron Children's Hospital SARS-CoV-2 Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Akron Children's Hospital SARS-CoV-2 Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Dated: January 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–00521 Filed 1–12–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: February 17–18, 2022.

Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 867–5309, *eleni.liapi@nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney and Urological Systems Function and Dysfunction Study Section.
Date: February 17–18, 2022.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 827–5467, *ganesan.ramesh@nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical Integrative Cardiovascular and Hematological Sciences Study Section.
Date: February 17–18, 2022.
Time: 9:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics—1 Study Section.
Date: February 17–18, 2022.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Maria Dolores Arjona Mayor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 806D, Bethesda, MD 20892, (301) 827–8578, *dolores.arjonamayor@nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular and Cellular Neuropharmacology Study Section.
Date: February 17–18, 2022.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Vanessa S. Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4185, MSC 7850, Bethesda, MD 20892, (301) 402–3726, *boycevs@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.
Date: February 17–18, 2022.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8515, *janzr2@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Cellular and Molecular Immunology—A Study Section.
Date: February 17–18, 2022.
Time: 9:30 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Mohammad Samiul Alam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809D, Bethesda, MD 20892, (301) 435–1199, *alammos@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Bacterial Pathogenesis Study Section.
Date: February 17–18, 2022.
Time: 9:30 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Richard G Kostriken, Ph.D., AB, BA Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, (240) 519–7808, *kostrikr@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.
Date: February 17, 2022.
Time: 9:30 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, (301) 435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.
Date: February 17–18, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Tami Jo Kingsbury, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (410) 274–1352, *tami.kingsbury@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00526 Filed 1–12–22; 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 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 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; HHS–NIH–CDC–SBIR PHS 2022–1 Phase I: Adjuvant Discovery for Vaccines and for Autoimmune and Allergic Diseases (Topic 104).
Date: February 7, 2022.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).
Contact Person: Poonam Tewary, 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 3G56, Rockville, MD

20852, (301) 761–7219, *tewaryp@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2022–1 Phase II: Adjuvant Discovery for Vaccines and for Autoimmune and Allergic Diseases (Topic 104).

Date: February 7, 2022.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Poonam Tewary, 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 3G56, Rockville, MD 20852, (301) 761–7219, *tewaryp@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: January 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00527 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Pre-Clinical Medications Discovery and Abuse Liability Testing for NIDA (8959).

Date: January 25, 2022.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jenny Raye Browning, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *jenny.browning@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; BRAIN Initiative: Tools for Germline Gene Editing in Marmosets (U01—Clinical Trial Not Allowed).

Date: February 14, 2022.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5819, *gm145a@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: January 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00609 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Review.

Date: February 4, 2022.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 7, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00477 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 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 of Mental Health Special Emphasis Panel; Instrumentation Program (S10 Clinical Trial Not Allowed).

Date: February 14, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Evon S. Ereifej, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Rockville, MD 20852, *ereifejes@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 7, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00524 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 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 of General Medical Sciences Special Emphasis Panel; Review of the Centers of Biomedical Research Excellence (COBRE) Phase 2 Applications.

Date: February 24–25, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Sonia Ortiz-Miranda, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (301) 402–9448, *sonia.ortiz-miranda@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 7, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00482 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Synthesis and Distribution of Opioid and Related Peptides.

Date: January 26, 2022.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, 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: January 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00522 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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 of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Study Section DDK–C COMMITTEE.

Date: March 16–18, 2022.

Time: 5:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 7, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00481 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.
Date: February 7–8, 2022.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Enhancement Awards: Genes, Genomes and Genetics.
Date: February 10, 2022.
Time: 9:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Karobi Moitra, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6893, *karobi.moitra@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–140: Catalytic Tool and Technology Development in Kidney, Urologic, and Hematologic Diseases (R21).
Date: February 15, 2022.
Time: 1:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, (301) 435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 20–065: Small Research Grants for Establishing Basic Science-Clinical Collaborations to Understand Structural Birth Defects.
Date: February 15, 2022.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.
Date: February 16–17, 2022.
Time: 9:30 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.
Date: February 16–17, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *eissenstatma@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Nutrition and Metabolism in Health and Disease Study Section.
Date: February 17–18, 2022.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 755–4335, *greg.shelness@nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.
Date: February 17–18, 2022.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.
Date: February 17–18, 2022.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.
Date: February 17–18, 2022.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451–4251, *Armaz.aschrafi@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Cellular and Molecular Biology of Complex Brain Disorders.
Date: February 17–18, 2022.
Time: 10:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00525 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 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 of General Medical Sciences Special Emphasis Panel; Review of NIH Pathway to Independence Awards (K99/R00).

Date: March 14, 2022.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 7, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00523 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed 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 on Aging Special Emphasis Panel; Diabetes and AD.

Date: February 8, 2022.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Proteostasis and aging.

Date: March 3, 2022.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anita H. Undale, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–827–7428, *anita.undale@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Transposable Elements.

Date: March 8, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 7, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–00480 Filed 1–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Argentina Beef Imports Approved for the Electronic Certification System (eCERT)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that the export certification requirement for certain imports of beef from the Argentine Republic (Argentina) subject to a tariff-rate quota will be accomplished through the Electronic Certification System (eCERT). All imports of beef from Argentina that are subject to the tariff-rate quota must have a valid export certificate with a corresponding eCERT transmission at the time of entry, or withdrawal from warehouse, for consumption. The United States Government (USG) has approved the request from Argentina to transition, from the way the USG currently receives export certificates from Argentina, to eCERT as the method of transmission. The transition to eCERT will not change the tariff-rate quota filing process or requirements. Importers will continue to provide the export certificate numbers from Argentina in the same manner as when currently filing entry summaries with U.S. Customs and Border Protection. The format of the export certificate numbers will remain the same for the corresponding eCERT transmissions.

DATES: The use of the eCERT process for certain Argentinian beef importations subject to a tariff-rate quota will be effective for beef entered, or withdrawn from a warehouse, for consumption on or after January 18, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Chief, Quota and Agriculture Branch, Trade Policy and Programs, Office of Trade, (202) 384–8905, or *HQQUOTA@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

There is an existing tariff-rate quota on certain beef from the Argentine Republic (Argentina) pursuant to Additional U.S. Note 3 of chapter 2 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff-rate quota for beef from Argentina was established by section 6 of the Presidential Proclamation No. 6763 (December 23, 1994), as a result of the Uruguay Round Agreements, approved by Congress in section 101 of the

Uruguay Round Agreements Act (19 U.S.C. 3511(a), Pub. L. 103–465, 108 stat. 4814). Tariff-rate quotas permit a specified quantity of merchandise to be entered or withdrawn for consumption at a reduced duty rate during a specified period. Furthermore, section 2012.3 of title 15 of the Code of Federal Regulations (CFR) states that beef may only be entered as a product of an eligible country for a tariff-rate quota if the importer makes a declaration to U.S. Customs and Border Protection (CBP) that a valid export certificate is in effect with respect to the beef. In addition, the CBP regulations, at 19 CFR 132.15, set forth provisions relating to the requirement that an importer must possess a valid export certificate at the time of entry, or withdrawal from warehouse, for consumption, to claim the in-quota tariff rate of duty on entries of beef subject to the tariff-rate quota.

The Electronic Certification System (eCERT) is a system developed by CBP that uses electronic data transmissions of information normally associated with a required export document, such as a license or certificate, to facilitate the administration of quotas and ensure that the proper restraint levels are charged without being exceeded. Argentina currently submits export certificates to CBP via email, and in the administration of the quota, CBP validates these certificates with the certificate numbers provided by importers on their entry summaries. Argentina requested to participate in the eCERT process to comply with the United States' tariff-rate quota for beef exported from Argentina for importation into the United States. CBP has coordinated with Argentina to implement the eCERT process, and now Argentina is ready to participate in this process by transmitting its export certificates to CBP via eCERT.

Foreign countries participating in eCERT transmit information via a global network service provider, which allows connectivity to CBP's automated electronic system for commercial trade processing, the Automated Commercial Environment (ACE). Specific data elements are transmitted to CBP by the importer of record (or an authorized customs broker) when filing an entry summary with CBP, and those data elements must match eCERT data from the foreign country before an importer may claim any applicable in-quota tariff rate of duty. An importer may claim an in-quota tariff rate when merchandise is entered, or withdrawn from warehouse, for consumption, only if the information transmitted by the importer matches the information transmitted by the foreign government. If there is no transmission by the foreign government upon entry, an importer must claim the higher over-quota tariff rate.[1] An importer may subsequently claim the in-quota tariff rate under certain limited conditions.[2]

This document announces that Argentina will be implementing the eCERT process for transmitting export certificates for beef entries subject to the tariff-rate quota. Imported merchandise that is entered, or withdrawn from warehouse, for consumption on or after January 18, 2022, must match the eCERT transmission of an export certificate from Argentina in order for an importer to claim the in-quota tariff rate. The transition to eCERT will not change the tariff-rate quota filing process or requirements. Importers will continue to provide the export certificate numbers from Argentina in the same manner as when currently filing entry summaries with CBP. The format of the export certificate numbers will not change as a result of the transition to eCERT. CBP will reject entry summaries that claim an in-quota tariff rate when filed without a valid export certificate in eCERT.

Dated: January 7, 2022.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2022–00462 Filed 1–12–22; 8:45 am]

BILLING CODE 9111–14–P

[1] If there is no associated foreign government eCERT transmission available upon entry of the merchandise, an importer may enter the merchandise for consumption subject to the over-quota tariff rate or opt not to enter the merchandise for consumption at that time (*e.g.,* transfer the merchandise to a customs bonded warehouse or foreign trade zone or export or destroy the merchandise).

[2] If an importer enters the merchandise for consumption subject to the over-quota tariff rate and the associated foreign government eCERT transmission becomes available afterwards, an importer may claim the in-quota rate of duty by filing a post summary correction (before liquidation) or a protest under 19 CFR part 174 (after liquidation). In either event, the in-quota rate of duty is allowable only if there are still quota amounts available within the original quota period.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2021–N208; FXES11130100000–212–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before February 14, 2022.

ADDRESSES:

Document availability and comment submission: Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross, ESPER0001705):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Regional Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing 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, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct

activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application number	Applicant, city, state	Species	Location	Take activity	Permit action
ES012136	Oregon Department of Environmental Quality, Hillsboro, OR.	Lost River sucker (*Deltistes luxatus*), Shortnose sucker (*Chasmistes brevirostris*).	Oregon	Harass by capture, handle, collect physical metrics, release, and salvage.	Renew.
ES67121B	Pacific Rim Conservation, Honolulu, HI.	Hawaiian petrel (*Pterodroma sandwichensis*), O'ahu 'elepaio (listed in 50 CFR 17 as Oahu elepaio (*Chasiempis ibidis*)).	Hawaii	Hawaiian petrel: Harass by survey, monitor, capture, handle, collect physical metrics, biosample, band, translocate, captive propagate, release, and deploy social attraction system. O'ahu 'elepaio: Harass by survey, monitor, capture, band, collect physical metrics, biosample, attach transmitters, and release.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Katherine Norman,

Assistant Regional Director–Ecological Services, Pacific Region.

[FR Doc. 2022–00622 Filed 1–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2021–0169; FXES11140800000–223–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; County of San Diego, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Ramona Municipal Water District (applicant) for a 4-year incidental take permit for the endangered Stephens' kangaroo rat and arroyo toad pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the preliminary determination that the proposed habitat conservation plan (HCP) qualifies as a ''low-effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended. The basis for this determination is discussed in the environmental action statement and the associated low-effect screening form, which are also available for public review.

DATES: We will accept comments received or postmarked on or before February 14, 2022.

ADDRESSES: *Obtaining Documents:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R8–ES–2021–0169 at *https://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

- *Online: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R8–ES–2021–0169.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0169; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–

431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Ramona Municipal Water District (applicant) for a 4-year incidental take permit for two covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The application addresses the potential ''take'' of the endangered Stephens' kangaroo rat and arroyo toad in the course of activities associated with installation of a 20-inch-diameter effluent pipeline in San Diego County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the habitat conservation plan (HCP) prepared by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a ''low-effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the Act as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant requests a 4-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, Stephens' kangaroo rat (*Dipodomys stephensi*) may be taken as a result of temporary impacts to 8.61 acres (ac) of habitat the species uses for breeding, feeding, and sheltering. Because potential incidental take is unlikely to be observed in burrows, the take limit will be set by habitat, and we estimate the number of individuals taken based on estimated density. Within 8.61-acre area, average Stephens' kangaroo rat density is categorized as low to trace (0–5 individuals per acre). In addition, arroyo toads {a. southwestern t. [*Anaxyrus californicus* (*Bufo microscaphus c.*)]} may be taken within the 11.59-acre project impact area. No arroyo toad breeding habitat will be impacted, but some individuals may be aestivating (a prolonged period of dormancy) within the project area. Any individual arroyo toads observed within the project area will be translocated to nearby suitable habitat. The take would be incidental to the applicant's activities associated with installation of a 20-inch-diameter effluent pipeline in San Diego County, California. The project includes in-perpetuity preservation and management of 8.61 ac of Stephens' kangaroo rat habitat within a 79-ac preserve managed for the species, and invasive species management in support of the arroyo toad.

The proposed project will temporarily impact 11.59 ac of land through trenching and placement of the pipeline, including 8.61 ac of Stephens' kangaroo rat habitat. Arroyo toads have been observed in wetland habitat near the proposed project site, and individual arroyo toad(s) may be aestivating underground within the project area and may be impacted during construction.

To minimize the effects of project construction on the Stephens' kangaroo rat, the proposed HCP includes fencing of the work area as well as trapping and relocation of individual Stephens' kangaroo rats prior to construction impacts. The applicant proposes to mitigate for permanent impacts to 8.61 ac of occupied Stephens' kangaroo rat habitat through preservation of 8.61 ac of occupied Stephens' kangaroo rat habitat within a nearby conservation easement and funding of long-term management to benefit the species.

To minimize take of arroyo toad, the proposed HCP includes measures to install arroyo toad exclusionary fencing around the work area and trap and relocate any arroyo toads in the work area prior to construction impacts. To mitigate impacts to arroyo toad, the applicant's proposed HCP includes measures to eliminate invasive species that prey upon arroyo toads in a nearby pond that is known to support arroyo toad breeding.

Proposed Action and Alternatives

The proposed action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the Stephens' kangaroo rat and arroyo toad. If we approve the permit, take of Stephens' kangaroo rat and arroyo toad would be authorized for the applicant's activities associated with the pipeline installation project. In the proposed HCP, the applicant considered the No Action Alternative. Under the No Action Alternative, no incidental take of Stephens' kangaroo rat or arroyo toad would occur, and no long-term protection and management would be afforded to the species. Under this alternative, the applicant would not be able to meet the growth and development needs of San Diego County.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a ''low-effect'' plan as defined by the *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that an HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C.

1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of Stephens' kangaroo rat and arroyo toad.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2022–00623 Filed 1–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081G3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held virtually on Wednesday, February 9, 2022, from 9:30 a.m. to approximately 5:00 p.m. (MST); and Thursday, February 10, 2022, from 9:30 a.m. to approximately 4:00 p.m. (MST).

ADDRESSES: The meeting on Wednesday, February 9 will be held virtually and can be accessed at: *https://rec.webex.com/rec/j.php?MTID=m2c4bb5a96cb62db32dbc28e2f608767e*, Meeting Number: 2764 737 4054, Password: Feb9.

The meeting on Thursday, February 10 will be held virtually and can be accessed at: *https://rec.webex.com/rec/j.php?MTID=md4caa110511fe90f209f9c96705fa4c6*, Meeting Number: 2764 343 6382, Password: Feb10.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Traynham, Bureau of Reclamation, telephone (801) 524–3752, email at *ltraynham@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) Current basin hydrology and water year 2022 operations; (2) experiments considered for implementation in 2022; (3) the status of threatened and endangered species; (4) long-term funding considerations; and (5) science results from Grand Canyon Monitoring and Research Center staff. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Individuals requiring special accommodations to access the public meeting should contact Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least (5) business days prior to the meeting so appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed on both days for any individual or organization wishing to make extemporaneous and/or formal oral comments. To allow for full consideration of information by the AMWG members, written notice should be provided to Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) prior to the meeting. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Any written comments received will be provided to the AMWG members.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Lee Traynham,

Chief, Adaptive Management Group, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2022–00507 Filed 1–12–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1289]

Certain Knitted Footwear; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 8, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Nike, Inc. of Beaverton, Oregon. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain knitted footwear by reason of infringement of certain claims of U.S. Patent No. 9,918,511 (''the '511 patent''); U.S. Patent No. 9,743,705 (''the '705 patent''); U.S. Patent No. 8,266,749 (''the '749 patent''); U.S. Patent No. 7,814,598 (''the '598 patent''); U.S. Patent No. 9,060,562 (''the '562 patent''); and U.S. Patent No. 8,898,932 (''the '932 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal

Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 7, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 5, 9–11, 15, and 17–20 of the '511 patent; claims 1–8 and 11–20 of the '705 patent; claims 1–9, 13–19, and 21 of the '749 patent; claims 1, 9, and 14 of the '598 patent; claims 1–4 of the '562 patent; and claims 11, 12, 14, and 15 of the '932 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''footwear with a knitted upper or with an upper with knitted elements'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Nike, Inc., One Bowerman Drive, Beaverton, OR 97005

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

adidas AG, World of Sports, Adi-Dassler-Strasse 1, 91074 Herzogenaurach, Germany

adidas North America, Inc., adidas Village, 5055 N Greeley Avenue, Portland, OR 97217

adidas America, Inc., adidas Village, 5055 N Greeley Avenue, Portland, OR 97217

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 10, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–00600 Filed 1–12–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on January 4, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Asyril SA, Villaz-St-Pierre, SWITZERLAND; Guangdong OPT Technology Co., Ltd., Dongguan, PEOPLE'S REPUBLIC OF CHINA; Roboteq, Inc., Scottsdale, AZ; Uson L.P., Houston, TX; and Shanghai JAKA Robotics Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, Acuity Brands, Inc., Conyers, GA; Lanmark Controls Inc., Londonderry, NH; Tokyo Keiso Co., Ltd., Tokyo, JAPAN; Hangzhou Hikrobot Technology Co., Ltd., Hangzhou, PEOPLE'S REPUBLIC OF CHINA; Bayshore Networks, Inc., Durham, NC; and FACTS, Inc., Cuyahoga Falls, OH, have withdrawn as parties to this venture.

In addition, JANOME Corporation has changed its name to Janome Sewing Machine Co., Ltd., Tokyo, JAPAN; KEBA Industrial Automation GmbH to KEBA AG, Linz, AUSTRIA; and NTI AG to LinMot, Spreitenbach, SWITZERLAND.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on October 5, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 22, 2021 (86 FR 58690).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00613 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on November 23, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (''AIM Photonics'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Regents of the University of Minnesota, Minneapolis, MN; Buhler Inc. Leybold Optics, Cary, NC; and Spark Photonics Design, Inc., Waltham, MA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIM Photonics intends to file additional written notifications disclosing all changes in membership.

On June 16, 2016, AIM Photonics filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 2016 (81 FR 48450).

The last notification was filed with the Department on August 19, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 5, 2021 (86 FR 55001).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00581 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on November 29, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical Technology Enterprise Consortium (''MTEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Integration Innovation Inc., Huntsville, AL; HackerOne, San Francisco, CA; Advanced Materials and Devices, Inc., Reno, NV; Cimarron Software Services Inc.,Houston, TX; Delta Chase LLC., West Chester, OH; Virginia Commonwealth University, Richmond, VA; H&H Medical Corporation, Williamsburg, VA; Spectrohm Inc. Tysons Corner, VA; Rubix LS, Lawrence, MA; University of Florida, Gainesville, FL; Phagelux (Canada) Inc., Montréal, CAN; Next Science, LLC., Jacksonville, FL; BlackBox Biometrics, Inc. (B3) Rochester, NY; VitaCyte LLC., Indianapolis, IN; Synedgen, Inc., Claremont, CA; KeriCure Medical, Wesley Chapel, FL; Kurve Technology Inc., Lynnwood,WA; SweetBio, Inc. Memphis, TN; DLH Silver Spring, MD; Novel Technologies Holdings Limited, Manchester, NH; KERECIS Limited, Isafjordur, ISL; NanoOxygenic LLC., Dallas, PA; Georgia State University Research Foundation, Inc. Atlanta, GA; Retia Medical LLC., Valhalla, NY; AivoCode Inc. La Jolla, CA; Medical Informatics Corp., Houston, TX; Technatomy Corporation Fairfax, VA; Terida LLC. Pinehurst, NC; Appili Therapeutics, Inc., Halifax, CAN; Continuous Precision Medicine(CPM) Research, Triangle Park, NC; Overseas Strategic Consulting, Ltd, Philadelphia, PA; Vizbii Technologies, Inc., Charleston, SC; Anthem Engineering LLC., Elkridge,MD; Perfusion Medical, LLC. Reston, VA; New York University, New York, NY; Catharsis Productions, Chicago,IL; University of New Hampshire Durham, NH; Aldyn, Boston, MA; GEN–AVIV LLC., North Miami Beach, FL; NeuroFlow, Inc., Philadelphia, PA; Advancement Strategy, LLC., Columbia, MD.; Belle Artificial Intelligence Corporation, Cambridge, MA; Diagnoss Inc, Pomona, CA; San Diego State University, San Diego, CA; Dovel Technologies, McLean, VA; ASSURSEC, LLC., LEESBURG, VA; Rhode Island Hospital, Providence, RI; University of Connecticut, Storrs, CT; Alertgy, Inc. MELBOURNE, FL; Boston University, Boston, MA; MBio Diagnostics, Inc. dba LightDeck Diagnostics, Boulder, CO; Pacific Institute for Research and Evaluation, Beltsville, MD; Tactical Medical Solutions, LLC., Anderson, SC; ViiNetwork, Inc., ViiMed, Washington, DC; Renaissance Biotech, LLC., Malibu, CA; Bio1 Systems, Inc., San Carlos, CA; DataRobot, Boston, MA; Knowesis Inc., Fairfax, VA; MassBiologics of the UMMS, Boston, MA; SOLUTE Inc., San Diego, CA; Aktiv Pharma Group, Broomfield, CO; Bettermeant, Inc., Berkeley, CA; SanMelix Laboratories, Inc., Hollywood, FL; Viscus Biologics LLC., Cleveland, OH; Guidehouse Inc. Falls Church, VA; Movement Rx Physical Therapy, P.C., San Diego, CA; Promethean LifeSciences, Inc., Pittsburgh, PA; Tygrus LLC., Troy, MI; MiMedx Group, Inc., Marietta, GA; Neomatrix Therapeutics, Inc., Stony Brook, NY; PuraLab LLC., Wilsonville, OR; InterSystems Corporation, Cambridge, MA; Full Spectrum Omega, Inc., Los Angeles, CA; Rockland Technimed Limited, Mahwah, NJ; MediWound, Ltd., Yavne, ISR; Primmune Therapeutics, Inc., San Diego, CA; Western Michigan University Homer Stryker M.D. School of Medicine, Kalamazoo, MI; Emmes Company LLC., Rockville MD; Canvas Incorporated, Huntsville, AL; Purgo Scientific, LLC., South Jordan, UT; Dascena, Houston, TX; Through The Cords LLC., Salt Lake City, UT; Armed Forces Services Corporation dba Magellan Federal, Arlington, VA; Immuron Limited, Victoria, AUS; Terumo BCT Biotechnologies, LLC., Lakewood, CO; TourniTek, Seattle, WA; West Therapeutic Development, LLC., Northbrook, IL; Maryland Development Center, Baltimore, MD; Tessonics Medical Systems Inc., BIRMINGHAM, MI; Vir Biotechnology, San Francisco, CA; Wound Exam Corp., Beverly Hills, CA; Creare LLC., Hanover, NH; Drexel

University, Philadelphia, PA; Exploration Institute, Cheyenne, WY; Graftworx, Inc.dba Alio, San Francisco, CA; NeurAegis, Inc. Southborough, MA; Stream Biomedical, Inc., Houston, TX; ZIEN Medical Technologies Inc., Salt Lake City, UT; Alcamena Stem Cell Therapeutics, LLC., Halethorpe, MD; Auburn University, Auburn, AL; BioAge Labs, Inc., Richmond, CA; Osteal Therapeutics, Inc., San Clemente, CA; VES LLC., Wilmington, OH; WearOptimo Woolloongabba, Queensland, AUS; Nexsys Electronics Inc. dba Medweb, San Francisco, CA; Cornerstone Research Group, Miamisburg, OH; Digital Infuzion Inc., Gaithersburg, MD; Hewlett Packard Enterprise, Reston, VA; Sonix Medical Devices Inc., Braselton, GA; Parallax Advanced Research Corporation, Beavercreek, OH; Programs Management Analytics & Technologies, Inc.; Norfolk, VA; Grand Valley State University, Grand Rapids, MI; KBR Wyle Services LLC., Beavercreek, OH Life365 Inc., Scottsdale, AZ; Synthesis Technologies, Inc., Pasadena, CA; IRegained Inc., Sudbury, CAN; TDA Research Inc., Wheat Ridge, CO; Think-Dragon, LLC., Ellicott City, MD; Healing Our Heroes Foundation DBA The Mission After, Del Mar, CA; Acer Therapeutics Inc., Newton, MA; ArchieMD Inc., Boca Raton, FL; Augmntr Inc., Berthoud, CO; D&K Engineering, San Diego, CA; Phlow Corp., Richmond, VA; Q30 Sports Science, LLC., Westport, CT; Scandinavian Biopharma Holding AB, Solna, SWE; CFD Research Corporation, Huntsville, AL; Endomedix, Inc., Montclair, NJ; Fusion Consulting Inc., Farmers Branch, TX; Voltron Therapeutics, New York, NY; Kopis Mobile LLC., Flowood, MS; Rain Technologies LLC., Las Vegas, NV; Tagup Inc., Somerville, MA; ZuluCare LLC., Bethpage, NY; Evidence Based Psychology LLC dba Susan David, Newton, MA; Kreative Technologies, LLC., Fairfax, VA; NeurOptics Inc., Irvine, CA; Oxygenium Inc., Great Neck, NY; Sentio Solutions Inc., San Francisco, CA; Navitas Business Consulting Inc., Herndon, VA; Presidio Government Solutions LLC., Reston, VA; University of Nebraska Medical Center, Omaha, NE; Evren Technologies, Inc., Newberry, FL; Kowa Inc., Houston, TX; LexisNexis Risk Solutions Inc., Washington, DC; Martellus Pty Ltd, Sydney, AUS; RevMedx Inc., Wilsonville, OR; electroCore Inc., Rockaway, NJ; GRIP Molecular Technologies Inc., Saint Paul, MN; Orthoforge, Inc, East Grand Rapids, MI; Plantiga Technologies Inc., Vancouver, CAN; Zansors LLC., Arlington, VA; GlobalMedia Group LLC., Scottsdale, AZ; GRI Technology Solutions, LLC., Durham, NC; Wearable Artificial Organs Inc., Beverly Hills, CA; Memsel Inc. Halton City, TX; Turner Innovations, Orem, UT; Circadian Positioning Systems Inc., Newport, RI; Levi Diagnostics, Inc., Fall River, MA; MeMed US Inc., Milpitas, CA; Riverside Research, Arlington, VA; Texas Tech University, Lubbock, TX; W.R. Joyce Incorporated, Michigan City, IN; Strive Tech Inc., Bothell, WA; NervGen Pharma Corp., Vancouver, CAN; Yale University, New Haven, CT; QuesGen Systems, Burlingame, CA; AirSupport LLC., Baltimore, MD; Gel4Med, Lowell, MA; MediView XR Inc., Cleveland, OH; Perceptive Medical Inc., Newport Beach, CA; iGov Technologies, Inc., Tampa, FL; International Fabric Machines, Boston, MA; Tanner Research Inc., Duarte, CA; Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, represented by Pennington Biomedical Research Center, Baton Rouge, LA; MindLab LLC., New York, NY; Sperry Medtech, Inc., Springfield, VT; Eurofins ARCA Technology Inc., Huntsville, AL; Odin Technologies, Charlotte, NC; Rajant Corporation, Malvern, PA; Viele Exploratory Sustainable Solutions LLC., Livingston Manor, NY; Iris Technology Corporation, Irvine, CA; PSYONIC Inc., Champaign, IL; Cayuga Biotech, Inc., Basking Ridge, NJ; Imeka Solutions Inc., Sherbrooke Quebec, CAN; Malum Inc., Coralville, IA; PercuSense Inc., Valencia, CA; PhAST Corp., Cambridge, MA; THE RESEARCH INSTITUTE OF THE MCGILL UNIVERSITY HEALTH CENTRE, Montreal, CAN; Case Western Reserve University, Cleveland, OH; Global Institute of Stem Cell Therapy and Research Inc., San Diego, CA; Hero Medical Technologies Inc., Ponte Vedra Beach, FL; Plymouth Rock Technologies Inc.; Plymouth, MA; StataDX, Inc., Cambridge, MA; Throne Biotechnologies Inc., Paramus, NJ; TiER1 Performance Solutions, Covington, KY; Traumatic Direct Transfusion Devices LLC., Raleigh, NC; SeaStar Medical Inc., Denver, CO; The Florida International University Board of Trustees, Miami, FL; Carnegie Mellon University, Pittsburgh, PA; Georgia Tech Research Corporation, Atlanta, GA; MEDX SpA Región metropolitana, Santiago de Chile., CHL; BioFire Defense LLC., Salt Lake City, UT; Phiex Technologies Inc., Boston, MA; Celerens, LLC., Clarksville, MD; luxML LLC., San Antonio, TX; Optum Public Sector Solutions Inc., Falls Church, VA; Florida Institute for Human & Machine Cognition, Pensacola, FL; Noninvasix Inc., Houston, TX; American Systems, Chantilly, VA; Five Vital Signs, Houston, TX; Corvid Technologies, LLC., Mooresville, NC; PreVeteran Group LLC., Jackson, WY; Antiviral Technologies LLC., Dallas, TX; Altec Incorporated Natick, MA; iFyber LLC., Ithaca, NY; OrganaBio LLC., South Miami, FL; Kinsa Inc., San Francisco, CA; Maxwell Biosciences Inc., Austin, TX; University of Massachusetts Lowell, Lowell, MA; Delta Development Team Inc., Tucson, AZ; Zymeron Corporation, Durham, NC; Curia Global Inc., Albany, NY; SYNC–THINK. INC., Palo Alto, CA; The Domenix Corporation dba Relevant Technology Inc., Chantilly, VA; Nihon Kohden OrangeMed Inc., Santa Ana, CA; Greenlight Guru, Indianapolis, IN; Rosalind Franklin University of Medicine & Science, North Chicago, IL; Phycin Inc., Frederick, MD; The Washington University, St. Louis, MO; NIRSense LLC., Richmond, VA; Tao Treasures LLC dba Nanobiofab, Frederick, MD; have been added as parties to this venture.

Also, ACF Technologies, Inc., Asheville, NC; Benchmark Electronics Inc., Scottsdale, AZ; CIYIS, LLC., Atlanta, GA; Cohen Veterans Bioscience, Inc., Cambridge, MA; DEFTEC Corporation, Huntsville, AL; FHI Clinical Inc., Durham, NC; Indiana Biosciences Research Institute, Indianapolis, IN; Innovenn, Inc., Madison, WI; ISEC7 Inc., Baltimore, MD; Nano Terra, Inc., Cambridge, MA; New Jersey Institute of Technology, Newark, NJ; Ripple LLC., Salt Lake City, UT; Systems Engineering Solutions Corporation, Greenbelt, MD; Unissant, Inc., Herndon, VA; Universal Consulting Services, Inc., Fairfax, VA; 7–SIGMA Incorporated, Minneapolis, MN; Amydis, Inc., San Diego, CA; Kansas State University, Manhattan, KS; Knowmadics, Inc., Herndon, VA; Klox Technologies, Inc., Laval, CAN; Aceso Plasma, Virginia Beach, VA; JTEK Data Solutions, LLC., Bethesda, MD; nQ Medical, Inc., Johns Island, SC; Oculogica, Inc., New York, NY; Articulate Labs, Dallas, TX; MEMBIO INC., Kitchener, CAN; Shamrock Medical LLC., Phoenix, AZ; ADM Tronics Unlimited, Inc., Northvale, NJ; Distributed Bio, South San Francisco, CA; University of South Florida, Tampa, FL; Airway Medical Innovations Pty Ltd., Brisbane, Queensland, AUS; Beyond Barriers Therapeutics, Inc., Glencoe, IL; Cherish Health, Inc., Cambridge, MA; Csymplicity Software Solutions, Inc., Allentown, PA; GoDx, Inc., Madison, WI; Immunexpress Inc., Seattle, WA; LifeQ, Inc., Alpharetta, GA; MAE Group, Deerfield, NH; Media

Riders Inc., Pearland, TX; Renovo Concepts, Inc., San Antonio, TX; Research Foundation for Mental Hygiene Inc. (NYSPI), New York, NY; SaNOtize Research & Development Corp., Vancouver, CAN; SimQuest, Annapolis, MD; Celularity, Warren, NJ; Bambu Vault, LLC., Lowell, MA; Digital For Mental Health (MYNDBLUE), Paris, FRA; Morgan 6, Charleston, SC; Rho Federal Systems Division, Inc. (RhoFED), Durham, NC; Sandstone Diagnostics, Inc., Pleasanton, CA; The Research and Recognition Project Inc., Corning, NY; Abram Scientific, Inc., Menlo Park, CA; Ace Laboratories Inc., Yarrow Point, WA; Acell, Inc., Columbia, MD; ActiBioMotion, LLC., Coralville, IA; Action Medical Technologies LLC., Conshohocken, PA; Acuity Systems LLC., Herndon, VA; AirStrip Technologies, San Antonio, TX; Atomo, Inc., West Lake Hills, TX; Auxocell Laboratories, Inc., Cambridge, MA; AxoGen Corporation, Alachua, FL; Bioflight, LLC., Akron, OH; BioMed SA, San Antonio, TX; Biotags LLC., Key Biscayne, FL; BioTether Sciences, Inc., San Rafael, CA; Blue Cirrus Consulting LLC., Greenville, SC; BrainScope Company, Inc., Bethesda, MD; Carnegie Mellon University, Pittsburgh, PA; Core Mobile Networks Inc.; DBA Core Mobile Inc., Campbell, CA; Daxor Corporation, New York, NY; Etiometry Inc., Boston, MA; Get Help Now LLC., Fort Myers, FL; Hememics Biotechnologies Inc., Gaithersburg, MD; Ichor Sciences, LLC., Nashville, TN; Infectious Disease Research Institute, Seattle, WA; Inflammatory Response Research Inc., Santa Barbara, CA; InTouch Technologies DBA InTouch Health, Goleta, CA; J.R. Reingold & Associates, Inc., Alexandria, VA; Jakris Technologies LLC, dba Digital Enterprise Solutions (DES), Wailuku, HI; Klaria AB, Uppsala, SWE; Level Ex, Inc., Chicago, IL; LOGGEREX INC., Deland, FL; Lundquist Institute at Harbor-UCLA & UCLA, Torrance, CA; Medcura, Inc., Riverdale, MD; Medicortex Finland Oy, Turku, FIN; Mespere LifeSciences Inc., Waterloo, Ontario, CAN; Millennium Enterprise Corporation, Fairfax, VA; Mineurva LLC., Albuquerque, NM; MY01 Inc., Montreal, QC, CAN; Nanohmics Inc., Austin, TX; Nanowear Inc., New York, NY; NeuEsse Inc., Dunbar, PA; NeuroRx, Inc., Wilmington, DE; Non-Invasive Medical Systems LLC., Stamford, CT; Nuada Orthopedics, Inc., Sherborn, MA; Predictions Systems Inc., Spring Lake, NJ; Presence Product Group, LLC., San Francisco, CA; Promaxo, Oakland, CA; Qool Therapeutics, Inc., Menlo Park, CA; Quantum Applied Science and Research, Inc., San Diego, CA; QUASAR Federal Systems, Inc., San Diego, CA; RAIN Scientific Inc., Asheville, NC; REACT Neuro, Cambridge, MA; Recogniti LLP., Hagerstown, MD; Remote Health LLC., Springfield, OH; Rutgers, The State University of New Jersey, New Brunswick, NJ; SAIC, Reston, VA; Schepens Eye Research Institute, Boston, MA; SightLife, Seattle, WA; Sim Vivo LLC., Essex, NY; Solutions Through Innovative Technologies, Inc., Fairborn, OH; STEL Technologies, LLC., Ann Arbor, MI; Symbinas Pharmaceuticals Inc., Jacksonville, FL; Techulon, Inc., Blacksburg, VA; The Johns Hopkins University Applied Physics Laboratory, LLC., Laurel, MD; Tissue Regeneration Sciences, Inc., Park City, UT; Tomorrow Lab LLC., New York, NY; Topadur Pharma AG, Schlieren, CHE; Vinformatix LLC., Baton Rouge, LA; VIRGINIA HIGH PERFORMANCE LLC., Virginia Beach, VA; VirtuSense Technologies, Inc., Peoria, IL; VoluMetrix LLC., Nashville, TN; Zane Networks, LLC., Washington, DC; Aptima, Inc., Woburn, MA; Stuart Therapeutics Inc., Stuart, FL; Vista LifeSciences, Inc., Parker, CO; Ceras Health Inc., New York, NY; CSA Biotechnologies, Chandler, AZ; Vigilent Labs Inc., Alexandria, VA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on November 18, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 09, 2020 (85 FR 79219).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00586 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on December 30, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alief Independent School District, Houston, TX; Australian Council for Educational Research, Camberwell, AUSTRALIA; Batavia Public School District, Batavia, IL; Echo360, Inc., Reston, VA; FeedbackFruits B.V., Amsterdam, NETHERLANDS; Gutenberg Technology, Boston, MA; IBM—Education Industry Group, Cambridge, MA; KION BILGISAYAR BILISIM YAZILIM SAN. VE NIVERSITESI TEKNOLOJI GELISTIRME, Istanbul, TURKEY; Loudon County Public Schools, Ashburn, VA; SameGoal, Inc., Beechwood, OH; Virtual Arkansas, Plumerville, AR; and Vivenns LLC, Hamilton Township, NJ, have been added as parties to this venture.

Also, Oregon State University, Corvallis, OR; GreenLight Credentials LLC, Dallas, TX; and CoSo Cloud, Oakland, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on October 13, 2021. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on November 9, 2021 (86 FR 62205).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00610 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Source Imaging Consortium, Inc.

Notice is hereby given that, on November 22, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Source Imaging Consortium, Inc. (''Open Source Imaging Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, University of Arizona, Phoenix, AZ, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Source Imaging Consortium intends to file additional written notifications disclosing all changes in membership.

On March 20, 2019, Open Source Imaging Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2019 (84 FR 14973).

The last notification was filed with the Department on May 5, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 25, 2021 (86 FR 28152).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00580 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on December 16, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Library of Congress, Washington, DC, has been added as a party to this venture.

Also, Sai Sanigepalli (individual member), Freemont, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 15, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 5, 2021 (86 FR 55003).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00604 Filed 1–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on November 30, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 1 World Training, Dallas, TX; AirBorn, Inc., Georgetown, TX; AkerBP ASA, Lysaker, NORWAY; Alta Data Technologies, LLC, Rio Rancho, NM; Archer, Overland Park, KS; Armis Security, Palo Alto, CA; Atrenne, A Celestica Company, Brockton, MA; AVIC CONSULTING CO., LTD, Beijing, PEOPLE'S REPUBLIC OF CHINA; B3 Insight, Inc., Denver, CO; Booz Allen Hamilton, Linthicum, MD; capitence Ltd, Dublin, IRELAND; Cloudwick, Technologies, Inc., Newark, CA; Comtel Electronics, Inc., San Diego, CA; Craft Designs, Inc., Huntsville, AL; Cubic Corporation, San Diego, CA; Databricks, Inc., San Francisco, CA; Digital-twin Modeling Technology, Ltd, Beijing, PEOPLE'S REPUBLIC OF CHINA; eDrilling, Stavanger, NORWAY; EGERIE Software, Toulon, FRANCE; Energy Research & Innovation Newfoundland & Labrador, Newfoundland & Labrador, CANADA; EnergyVue Services Limited, Aberdeen, UNITED KINGDOM; General Atomics Aeronautical Systems, Inc., Poway, CA; General Micro Systems, Inc., Rancho Cucamonga, CA; GeoComputing Group, LLC; Houston, TX; GridPoint Dynamics, Limited Liability Company, Moscow, RUSSIAN FEDERATION, Harmony Solutions Limited, Westlands, KENYA; IDEAS Engineering and Technology, LLC, Albuquerque, NM; Intelligent Wellhead Systems Inc., Alberta, CANADA; ITZ, LLC, Saint Inigoes, MD; KAVCA AS, Oslo, NORWAY; MapLarge Inc., Atlanta, GA; Nanjing Origin Information Technology Co. Ltd., Nanjing, PEOPLE'S REPUBLIC OF CHINA; Naonworks Co. Ltd., Seoul, REPUBLIC OF KOREA; NORCE Norwegian Research Centre AS, Bergen, NORWAY; NOV, Houston, TX; Perecon AS, Bergen, NORWAY; Petroleum Research Newfoundland & Labrador, Newfoundland & Labrador, CANADA; Pixus Technologies USA Corp., Tonawanda, NY; Pro Well Plan as, Bergen, NORWAY; PT. NUVISION INTERNASIONAL INDONESIA, Jakarta, INDONESIA; ROGII Inc, Houston, TX; Saison Information Systems Co., Ltd., Minato-ku, JAPAN; Sciens Innovations, LLC, York, PA; Sealevel Systems, Inc., Liberty, SC; Selman & Associates, Ltd.,

Midland, TX; Ventum Consulting Foshan Ltd, Beijing, PEOPLE'S REPUBLIC OF CHINA; ViaSat, Inc., Carlsbad, CA; and wehyve GmbH, Braunschweig, GERMANY, have been added as parties to this venture.

Also, ASE Consulting, Ltd., Lytham, UNITED KINGDOM; Avanade, Inc., Seattle, WA; Beijing JCC Information Consulting Co., Ltd, Beijing, PEOPLE'S REPUBLIC OF CHINA; Beijing Thunisoft Information Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA, BMC Software, Inc., Houston, TX; Bridewell Consulting Ltd, Reading, UNITED KINGDOM; Cisco Systems, Inc., San Jose, CA; Ecole Centrale de Lille, Villeneuve d'Ascq, FRANCE; Edgelox, Duluth, GA; Embassy of Things, San Diego, CA; Envizion cvba, Boutersem, BELGIUM; Fruition Partners B.V., Rijswijk, THE NETHERLANDS; Gelder Gringas and Associates, Ottawa, CANADA; Hint Americas, Inc., Houston, TX; Interface Concept Inc., Naperville, IL; Johns Hopkins University Applied Physics Laboratory, Laurel, MD; Leeds City Council, Leeds, UNITED KINGDOM; Lyrn, Copenhagen, DENMARK; Maana, Inc., Menlo Park, CA; Mellanox Federal Systems, Houston, TX; Mundo Cognito Ltd., Penn, UNITED KINGDOM; Noble Energy, Inc., Houston, TX; OPC Foundation, Ravenna, OH; Panamerica Computers, Inc., dba PCi Tec, Luray, VA; PMK Architecture Services, LLC, San Diego, CA; RagnaRock Geo, Trondheim, NORWAY; Searcher Seismic Geodata Pty Ltd, West Perth, AUSTRALIA; SMART Embedded Computing, Tempe, AZ; TRM Technologies Inc., Ottawa, CANADA; University of York, Department of Computer Science, York, UNITED KINGDOM; and vCISO Services, LLC, Franklin, TN, have withdrawn as parties to this venture.

In addition, Wintershall DEA GmbH has changed its name to Wintershall DEA AG, Hamburg, Germany.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on August 2, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47148).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00590 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Subcutaneous Drug Development & Delivery Consortium, Inc.

Notice is hereby given that, on December 8, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Subcutaneous Drug Development & Delivery Consortium, Inc., (''Subcutaneous Drug Development & Delivery Consortium, Inc.'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GlaxoSmithKline LLC, Collegeville, PA; Merck Sharp & Dohme Corp, Kenilworth, NJ; and Pfizer Inc., New York, NY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Subcutaneous Drug Development & Delivery Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On October 26, 2020, Subcutaneous Drug Development & Delivery Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 3, 2020 (85 FR 78148).

The last notification was filed with the Department on March 31, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 15, 2021 (86 FR 19902).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00591 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electrified Vehicle and Energy Storage Evaluation

Notice is hereby given that, on December 21, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Electrified Vehicle and Energy Storage Evaluation (''EVESE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Brunswick, Mettawa, IL, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and EVESE intends to file additional written notifications disclosing all changes in membership.

On September 24, 2020, EVESE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 15, 2020 (85 FR 65423).

The last notification was filed with the Department on September 21, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 25, 2021 (86 FR 58691).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00605 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MLCommons Association

Notice is hereby given that on December 3, 2021 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* (the ''Act''), MLCommons Association (''MLCommons'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Femtosense, Inc., Palo Alto, CA; Sebastian Magierowski (individual member), Toronto, CANADA; Oana Balmau (individual member), Montreal, CANADA; Jeffrey Mao (individual member), Union City, CA; Maxwell Labs Inc, New Hope, MN; Anh Nguyen (individual member), Munich, GERMANY; Runa Eschenhagen (individual member), Tubingen, GERMANY; Siliconeuro, Inc., San Jose, CA; Deci.ai, Ramat Gan, ISRAEL; Deep AI Technologies, Caesarea, ISRAEL; Telecommunications Technology Association (TTA), Seongnam-City, SOUTH KOREA; and Arun Tejusve Raghunath Rajan (individual member), San Jose, CA have joined as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notification was filed with the Department on September 23, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 22, 2021 (86 FR 58689).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00608 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PDF Association, Inc.

Notice is hereby given that, on November 11, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the PDF Association, Inc. (PDFa) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The name and principal place of business of the standards development organization is: PDF Association, Inc., 10 Longfellow Road, Winchester, MA. The nature and scope of the PDF Association's standards development activities are: The standardization of terminology, definitions, formats, and procedures for the production and use of PDF documents, metadata associated with the PDF documents, storage and retrieval of information. Standards, recommended practices, technical reports, white papers, and application notes prepared in accordance with the PDF Association's policies and procedures are intended to have broad acceptance as well as provide the basis upon which to achieve international accord in the development of industry standards. The PDF Association will also coordinate its work with that of other existing ANSI accredited organizations and committees working in related areas.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division, Department of Justice.

[FR Doc. 2022–00578 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on December 15, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TVS REGZA Corporation, Kawasaki, JAPAN; and Hong Kong Ryosan Ltd., Kowloon, Hong Kong, HONG KONG SAR, have been added as parties to this venture.

Also, Alco Electronics Limited, Shatin, Hong Kong, HONG KONG SAR; AutoChips, Inc., Anhui, PEOPLE'S REPUBLIC OF CHINA; Eastern Asia Technology (HK) Limited, Kowloon, Hong Kong, HONG KONG SAR; SoJean Technology Co., Ltd., New Taipei City, TAIWAN; Intel Corporation, Hillsboro, OR; and Shinko Shoji Co. Ltd., Osaka, JAPAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on August 2, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47151).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–00597 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Fluids for Electrified Vehicles

Notice is hereby given that, on December 17, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Fluids for Electrified Vehicles (''AFEV'') has filed written notifications simultaneously with the

Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chevron Technical Center, Richmond, CA; ENEOS Corporation, Tokyo, JAPAN; ExxonMobil Research and Engineering Company, Spring, TX; SI Group, Schenectady, NY; and Vanderbilt Chemicals, LLC, Norwalk, CT, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AFEV intends to file additional written notifications disclosing all changes in membership.

On June 16, 2021, AFEV filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2021 (86 FR 45751).

The last notification was filed with the Department on October 12, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 24, 2021 (86 FR 67082).

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2022–00596 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0077]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of an Approved Collection

AGENCY: Federal Bureau of Investigation, Criminal Justice Information Services Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, is 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: The Department of Justice encourages public comment and will accept input until March 14, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; phone: 304–625–4320 or email *glbrovey@fbi.gov.*

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 Federal Bureau of Investigation, Criminal Justice Information Services Division, 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:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* FIX NICS Act State Implementation Plan Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. Primary: State, local, federal and tribal law enforcement agencies. This collection is needed for the reporting or making available of appropriate records to the National Instant Criminal Background Check System (NICS) established under section 103 of the Brady Handgun Violence Prevention Act. Acceptable data is stored as part of the NICS of the FBI.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated 56 respondents will complete each form within approximately 2,400 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,240 total annual burden hours anticipated with this collection.

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.405A, Washington, DC 20530.

Dated: January 10, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–00563 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On January, 7, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States of America* v. *Derichebourg Recycling USA, Inc.,* Civil Action No. 22–cv–00060.

In this action, the United States, on behalf of the U.S. Environmental Protection Agency, filed a Complaint alleging violations at three of Defendant's scrap metal recycling facilities in Texas of the Clean Air Act's Recycling and Emission Reduction regulations, 40 CFR part 82, which were promulgated pursuant to the Clean Air Act's title VI stratospheric ozone protection provisions (''Title VI''), 42 U.S.C. 7671–7671q,. In the Complaint, the U.S. alleges that the company violated title VI of the Clean Air Act and the regulations promulgated thereunder by failing to ensure that any refrigerant contained in the appliances and motor vehicles it accepted for recycling was

properly recovered. Specifically, the United States alleges that Defendant accepted appliances and motor vehicles that contained (or once contained) refrigerant and failed to either recover the refrigerant or ensure that it had been properly recovered, as required.

Under the proposed settlement, the Defendant agrees to pay $442,500.00 in civil penalties and perform certain injunctive relief to ensure that all ten of its facilities in Texas and Oklahoma are operating in compliance with applicable federal laws and regulations.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Derichebourg Recycling USA, Inc.,* D.J. Ref. No. 90–5–2–1–12352. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $15.25 (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. 2022–00624 Filed 1–12–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Benefit Rights and Experience Report

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Benefit Rights and Experience Report.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 14, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Kevin Stapleton by telephone at ((202) 693–3009 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Stapleton.Kevin@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4520, 200 Constitution Avenue NW, Washington, DC 20210; by email: *Stapleton.Kevin@dol.gov;* or by fax (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Kevin Stapleton by telephone at (202) 693–3009 (this is not a toll-free number) or by email at *Stapleton.Kevin@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 can be properly assessed.

Eligibility for unemployment insurance benefits requires applicants demonstrate attachment to the labor force. This requirement of labor force attachment is generally measured through the amount of past wages earned. The data in the ETA 218, Benefit Rights and Experience Report, include numbers of individuals who were and were not monetarily eligible, those who were eligible for the maximum benefits, those who were eligible based on classification by potential duration categories, and those who were exhausting their full entitlement as classified by actual duration categories. DOL uses these data to conduct solvency studies, cost estimating and modeling, and in assessment of state benefit formulas. Section 303(a)(6) of the Social Security Act authorizes this information collection.

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 it is approved by OMB under the PRA 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 Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0177.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including 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).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Benefit Rights and Experience Report.

Form: ETA 218.

OMB Control Number: 1205–0177.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Varies.

Total Estimated Annual Responses: 216.

Estimated Average Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 108 hours.

Total Estimated Annual Other Cost Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–00511 Filed 1–12–22; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health Onsite Consultation Agreements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-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 February 14, 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.* 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.*

SUPPLEMENTARY INFORMATION: OSHA's On-Site Consultation Service offers free and confidential advice to small and medium-sized businesses in all states across the country, with priority given to high-hazard worksites. Consultation services are totally separate from enforcement and do not result in penalties or citations. The Consultation Program regulations specify services to be provided, and practices and procedures to be followed by the State On-site Consultation Programs. Information collection requirements set forth in the On-site Consultation Program regulations are in two categories: State Responsibilities and Employer Responsibilities. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 20, 2021 (86 FR 58104).

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–OSHA.

Title of Collection: Occupational Safety and Health Onsite Consultation Agreements.

OMB Control Number: 1218–0110.

Affected Public: State, Local, and Tribal Governments; Business or other for-profits.

Total Estimated Number of Respondents: 22,896.

Total Estimated Number of Responses: 94,838.

Total Estimated Annual Time Burden: 223,495 hours.

Total Estimated Annual Other Costs Burden: $13,165,188.22.

Authority: 44 U.S.C. 3507(a)(1)(D).

Nora Hernandez,

Department Clearance Officer.

[FR Doc. 2022–00515 Filed 1–12–22; 8:45 am]

BILLING CODE 4510–26–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–37 and CP2022–44; Order No. 6089]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent Postal Service filing concerning classification changes to the Mail Classification Schedule related to Inbound International Tracked Delivery Service. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 18, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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IIII. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3040.130 through 39 CFR 3040.135, the Postal Service filed a request and associated supporting information to add Inbound International Tracked Delivery Service (IITDS) to the competitive product list.[1] The Postal Service also gave notice pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3035.105 that the Governors established classifications and rates not of general applicability for IITDS. Request at 1. To support its Request, the Postal Service filed a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. *Id.* at 1–2. It also filed supporting financial workpapers. *Id.* The Postal Service intends for the new service and rates to take effect on April 1, 2022. *Id.* at 4.

The Postal Service seeks to add IITDS to the competitive product list as part of the International Ancillary Services product. *Id.* at 3, Attachment 4. The prices for IITDS are fixed by the Universal Postal Union (UPU) and will be set at 0.4 Special Drawing Rights (SDR) per item for the provision of inbound tracked delivery services with up to an additional 0.75 SDR per item on the basis of performance of electronic transmission of tracking information. *Id.* at 3. The Postal Service states that IITDS provides foreign postal operators UPU default rates for the tracked service and that IITDS' inclusion on the competitive product list would not preclude the Postal Service from exchanging tracked items with foreign postal operators pursuant to negotiated rates set forth in multilateral or bilateral agreements. *Id.* at 3–4.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2022–37 and CP2022–44 to consider the Request pertaining to the proposed addition of IITDS to the competitive product list. The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comments are due no later than January 18, 2022. The public portions of these filings can be accessed via the Commission's website (*http://www.prc.gov*). The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2022–37 and CP2022–44 to consider the matters raised in each docket by the Request of USPS to Add Inbound International Tracked Delivery Service to the Competitive Product List, Notice of Establishment of Classifications and Rates Not of General Applicability, and Application for Non-Public Treatment of Materials, filed January 7, 2022.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than January 18, 2022.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–00626 Filed 1–12–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of USPS to Add Inbound International Tracked Delivery Service to the Competitive Product List, Notice of Establishment of Classifications and Rates Not of General Applicability, and Application for Non-Public Treatment of Materials, January 7, 2022 (Request).

RAILROAD RETIREMENT BOARD

Civil Monetary Penalty Inflation Adjustment

AGENCY: Railroad Retirement Board.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2022.

SUMMARY: As required by Section 701 of the Bipartisan Budget Act of 2015, entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Railroad Retirement Board (Board) hereby publishes its 2022 annual adjustment of civil penalties for inflation.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–1275, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015), entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (Inflation Adjustment Act) to require agencies to publish regulations adjusting the amount of civil monetary penalties provided by law within the jurisdiction of the agency not later than January 15th of every year.

For the 2022 annual adjustment for inflation of the maximum civil penalty under the Program Fraud Civil Remedies Act of 1986, the Board applies the formula provided by the 2015 Act and the Board's regulations at Title 20, Code of Federal Regulations, Part 356. In accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the Consumer Price Index (CPI–U) for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. The percent increase between the CPI–U for October 2021 and October 2020, as provided by Office of Management and Budget Memorandum M–22–07 (December 15, 2021) is 1.06222 percent. Therefore, the new maximum penalty under the Program Fraud Civil Remedies Act is $12,537 (the 2021 maximum penalty of $11,803 multiplied by 1.06222, rounded to the nearest dollar). The new minimum penalty under the False Claims Act is $12,537 (the 2021 minimum penalty of $11,803 multiplied by 1.06222, rounded to the nearest dollar), and the new maximum penalty is $25,076 (the 2021 maximum penalty of $23,607 multiplied by 1.06222, rounded to the nearest dollar). The adjustments in penalties will be effective January 13, 2022.

Dated: January 7, 2022.

By Authority of the Board

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2022–00506 Filed 1–12–22; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34468; File No. 812–15235]

John Hancock Exchange-Traded Fund Trust, et al.

January 10, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under Section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

APPLICANTS: John Hancock Exchange-Traded Fund Trust (the ''Trust''), John Hancock Investment Management LLC (''John Hancock'') and Foreside Fund Services, LLC.

SUMMARY OF APPLICATION: Applicants request an order (''Order'') that permits: (a) The Funds (defined below) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

FILING DATE: The application was filed on June 2, 2021 and amended on July 16, 2021 and December 20, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on February 4, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov.* Applicants: Kinga Kapuscinski, Esq., John Hancock Investment Management LLC, *kkapuscinski@jhancock.com.*

FOR FURTHER INFORMATION CONTACT: Keri E. Riemer, Senior Counsel, at (202) 551–8695 or Marc Mehrespand, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Trust is a business trust organized under the laws of Massachusetts and will consist of one or more series operating as a Fund. The Trust is registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including the initial Fund (the ''Initial Fund''). The Funds will offer exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order.[2]

2. John Hancock, a Delaware limited liability company, will be the investment adviser to the Initial Fund. Subject to approval by the Trust's board of trustees, John Hancock or any entity controlling, controlled by, or under common control with John Hancock (any such entity included in the term ''Adviser''), will serve as investment adviser to each Fund. John Hancock is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). John Hancock may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each, a ''Sub-Adviser''). Any Sub-Adviser to a Fund will be registered under the Advisers Act.

3. Foreside Fund Services, LLC is a Delaware limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and will act as the principal underwriter of shares of the Initial Fund. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act and under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested Order would permit applicants to offer Funds that operate as contemplated by the Reference Order. Because the relief requested is the same as certain of the relief granted by the Commission under the Reference Order and because John Hancock or an affiliate has initially entered into a licensing agreement with Fidelity Management & Research Company, or an affiliate thereof, in order to offer Funds that operate as contemplated by the Reference Order,[3] the Order would incorporate by reference the terms and conditions of the same relief of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by John Hancock or any Adviser; (b) offers exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order; and (c) complies with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order (each such company or series and the Initial Fund, a ''Fund'').[4]

[1] Fidelity Beach Street Trust, et al., Investment Company Act Rel. Nos. 33683 (Nov. 14, 2019) (notice) and 33712 (Dec. 10, 2019) (order). Applicants are not seeking relief under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the ''Section 12(d)(1) Relief''), and relief under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, except as necessary to allow a Fund's receipt of Representative ETFs included in its Tracking Basket solely for purposes of effecting transactions in Creation Units (as these terms are defined in the Reference Order), notwithstanding the limits of Rule 12d1–4(b)(3). Accordingly, to the extent the terms and conditions of the Reference Order relate to such relief, they are not incorporated by reference herein other than with respect to such limited exception.

[2] To facilitate arbitrage, among other things, each day a Fund will publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance.

[3] Certain aspects of how the Funds will operate (as described in the Reference Order) are the intellectual property of Fidelity Management & Research Company (or its affiliates).

[4] All entities that currently intend to rely on the Order are named as applicants. Any other entity

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00598 Filed 1–12–22; 8:45 am]

BILLING CODE 8011–01–P

that relies on the Order in the future will comply with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93933; File No. SR–NYSE–2021–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12

January 7, 2022.

I. Introduction

On July 2, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to make its rules governing the operation of the Market-Wide Circuit Breakers (''MWCB'') mechanism permanent. The proposed rule change was published for comment in the **Federal Register** on July 22, 2021.[3] On August 27, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed change.[5] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule changes.[6] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [7] provide that, after instituting proceedings, the Commission shall issue an order approving or disapproving a proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.[8] The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[9] The 180th day for the proposed rule change is January 18, 2022.

The Commission is extending the 180-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, including the sufficiency of the proposal's ongoing assessment provisions.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates March 19, 2022 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2021–40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00491 Filed 1–12–22; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92785A, 86 FR 50202 (September 7, 2021).

[6] *See* Securities Exchange Act Release No. 93212, 86 FR 55066 (October 5, 2021).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[9] 15 U.S.C. 78s(b)(2)(B)(ii)(II)(aa).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93934; File No. SR–NYSE–2020–96]

New York Stock Exchange LLC; Order Granting Petition for Review and Scheduling Filing of Statements Regarding an Order Disapproving Proposed Rule Change To Amend Its Rules Establishing Maximum Fee Rates To Be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners

January 7, 2022.

This matter comes before the Securities and Exchange Commission (''Commission'') on petition to review the disapproval, pursuant to delegated authority, of the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') proposed rule change (File No. SR–NYSE–2020–96) to amend its rules establishing maximum fee rates to be charged by member organizations for forwarding proxy and other materials to beneficial owners.

On December 15, 2020, the Commission issued a notice of filing of the proposed rule change with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder.[3] On February 1, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] a longer time period was designated within which to act on the proposed rule change.[5] On March 18, 2021, proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On June 11, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[8] a longer time period was designated for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.[9] On August 18, 2021, after consideration of the record for the proposed rule change, the Division of Trading and Markets (''Division''), pursuant to delegated authority,[10] issued an order disapproving the proposed rule change (''Disapproval Order'').[11]

Pursuant to Rule 430 of the Commission's Rules of Practice,[12] on August 25, 2021, the Exchange filed a notice of intention to petition for review of the Disapproval Order, and on September 1, 2021, the Exchange filed a petition for review of the Disapproval Order. Pursuant to Rule 431(e) of the Commission Rules of Practice,[13] a notice of intention to petition for review results in an automatic stay of the action by delegated authority.

Pursuant to Rule 431 of the Commission's Rules of Practice,[14] the Exchange's petition for review of the Disapproval Order is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Disapproval Order on or before February 3, 2022.

For the reasons stated above, it is hereby:

Ordered that the Exchange's petition for review of the Division's action to disapprove the proposed rule change by delegated authority is *granted*; and

It is further *ordered* that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before February 3, 2022.

It is further *ordered* that the automatic stay of delegated action pursuant to Commission Rule of Practice 431(e) is hereby discontinued.

The order disapproving the proposed rule change (File No. SR–NYSE–2020–96) shall remain in effect.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00500 Filed 1–12–22; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90677 (December 15, 2020), 85 FR 83119 (December 21, 2020).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 91025 (February 1, 2021), 86 FR 8420 (February 5, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 91359 (March 18, 2021), 86 FR 15734 (March 24, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 92154 (June 11, 2021), 86 FR 32301 (June 17, 2021).

[10] 17 CFR 200.30–3(a)(12).

[11] *See* Securities Exchange Act Release No. 92700 (August 18, 2021), 86 FR 47351 (August 24, 2021).

[12] 17 CFR 201.430.

[13] 17 CFR 201.431(e).

[14] 17 CFR 201.431.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–224, OMB Control No. 3235–0217]

Proposed Collection; Comment Request; Extension: Rule 17e–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') deems a remuneration as ''not exceeding the usual and customary broker's commission'' for purposes of Section 17(e)(2)(A) of the Investment Company Act (15 U.S.C. 80a–17(e)(2)(A)) if, among other things, a registered investment company's (''fund's'') board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is reasonable and fair compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures (''review requirement''). Rule 17e–1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board (''recordkeeping requirement''). The review and recordkeeping requirements under rule 17e–1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker's commission. Without the recordkeeping requirement, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e–1.

Based upon an analysis of fund filings on Form N–CEN, approximately 1,640 funds report reliance on rule 17e–1. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e–1 is approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e–1 to be approximately 82,000 hours.[1] We further estimate that, of these:

- 60 percent (49,200 hours) are spent by senior accountants, at an estimated hourly wage of $221,[2] for a total of approximately $10,873,200 per year;[3]
- 30 percent (24,600 hours) are spent by in-house attorneys at an estimated

[1] 1,604 funds × 50 hours per fund = 82,000 hours.

[2] The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figures are also based on published rates for senior accountants and in-house attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $221 and $425, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[3] 49,200 hours × $221 per hour = $10,873,200.

hourly wage of $425, for a total of approximately $10,455,000 per year;[4] and

• 10 percent (8,200) are spent by the funds' board of directors at an hourly cost of $4,770, for a total of approximately $39,114,000 per year.[5]

Based on these estimated wage rates, the total cost to the industry of the hour burden for complying with the review and recordkeeping requirements of rule 17e–1 is approximately $60,442,200.[6] The Commission staff estimates that there is no cost burden associated with the information collection requirement of rule 17e–1 other than this cost.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e–1 is mandatory. The information provided under rule 17e–1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John R. Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

[4] 24,600 hours × $425 per hour = $10,455,000.

[5] 8,200 hours × $4,770 per hour = $39,114,000. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

[6] $10,873,200 + $10,455,000 + $39,114,000 = $60,442,200.

Dated: January 10, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00582 Filed 1–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93927; File No. SR–MEMX–2021–19]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Establish a Monthly Membership Fee

January 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2021, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on January 3, 2022. The text of the proposed rule change is provided in Exhibit 5.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish a Monthly Membership Fee for Members of the Exchange of $200. The Monthly Membership Fee is proposed to be assessed to each active Member at the close of business on the first day of each month. For example, the Monthly Membership Fee for January 2022 will be assessed to all active Members at the close of business on January 3, 2022, the first business day of the month.

However, if a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the time any Monthly Membership Fee will be assessed (*i.e.,* the close of business on January 3, 2022) and the Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Member will not be obligated to pay the Monthly Membership Fee, as such Member will not be considered to have an ''active'' Membership. The Exchange believes this to be appropriate because there are several pre-conditions and then a 30-day waiting period before a voluntary resignation shall take effect pursuant to Rule 2.8.

As proposed, the Monthly Membership Fee for a firm will not be prorated, which the Exchange believes is reasonable based on the frequency that the fee is assessed (*i.e.,* monthly instead of applying to a longer period) and the relatively low proposed fee of $200 for the Monthly Membership Fee.

The Exchange does not presently contemplate proposing any application fees, trading rights or trading permit fees, market participant identifier (''MPID'') fees or so-called ''headcount'' fees.

To reflect the implementation of the Monthly Membership Fee proposed herein, the Exchange also proposes to delete the following sentence from the Fee Schedule: ''MEMX does not charge for membership, market data products, physical connectivity or application sessions.'' The Exchange notes that it is not proposing to adopt fees for market data products at this time. The Exchange further notes that it is separately filing a proposal to adopt fees for physical connectivity and application sessions (with the same implementation date as the proposed changes in this filing) and that such separate proposal will also propose to

add language in the Fee Schedule stating that MEMX does not charge fees for market data products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that there is value in becoming a Member of the Exchange and that the proposed Monthly Membership Fee is reasonable. The Monthly Membership Fee is lower than or comparable to the membership fees imposed by several other national securities exchanges that charge such fees.[6] Moreover, insofar as the Exchange does not charge—nor does it presently contemplate charging—application fees, trading rights fees, trading permit fees, or fees for multiple MPIDs, the comparative price of membership is less or significantly less than comparative prices at other exchanges.[7] The Exchange also does not charge—nor does it presently contemplate charging—so-called ''headcount fees,'' *e.g.,* fees charged for each Form U–4 filed for registration of a representative or a principal or the transfer or re-licensing of such personnel,[8] further highlighting the reasonableness of the proposed Monthly Membership Fee.

The Exchange believes that the proposed Monthly Membership Fee is not unfairly discriminatory because it would be assessed equally across all Members or firms that seek to become Members. The Exchange believes that the proposed Monthly Membership Fee is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member of the Exchange. In addition, many market participants still have not joined the Exchange despite the Exchange's growth in one year to more than 4% of the overall equities market share. To illustrate, the Exchange currently has 66 Members. However, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 142 members, Cboe BZX has 140 members, and Investors Exchange LLC (''IEX'') has 133 members.[9]

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and no broker-dealer is required to become a member of the Exchange. Specifically, neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange. The Exchange acknowledges that competitive forces may require certain broker-dealers to be members of all equities exchanges. However, the Exchange believes that the proposed fee of $200 as a Monthly Membership Fee is reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that deemed it necessary to join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

The Exchange further believes that the proposed fees would be an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and are not unfairly discriminatory. As the Commission noted in its Concept Release Concerning Self-Regulation:

> The Commission to date has not issued detailed rules specifying proper funding levels of [self-regulatory organization (''SRO'')] regulatory programs, or how costs should be allocated among the various SRO constituencies. Rather, the Commission has examined the SROs to determine whether they are complying with their statutory responsibilities. This approach was developed in response to the diverse characteristics and roles of the various SROs and the markets they operate. The mechanics of SRO funding, including the amount of revenue that is spent on regulation and how that amount is allocated among various regulatory operations, is related to the type of market that an SRO is operating. Thus, each SRO and its financial structure is, to a certain extent, unique. While this uniqueness can result in different levels of SRO funding across markets, it also is a reflection of one of the primary underpinnings of the National Market System. Specifically, by fostering an environment in which diverse markets with diverse business models compete within a unified National Market System, investors and market participants benefit.[10]

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. Effective regulation is central to the proper functioning of the securities markets. Recognizing the importance of such efforts, Congress decided to require national securities exchanges to register with the Commission as self-regulatory organizations to carry out the purposes of the Act. The Exchange therefore believes that it is critical to ensure that regulation is appropriately funded. The Monthly Membership Fee is expected to provide a source of funding towards the Exchange's costs related to onboarding Members and providing ongoing support.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] For example, the New York Stock Exchange LLC (''NYSE'') annual trading license fee for member organizations ranges from approximately $25,000 to $50,000 based on the type of member organization and number of trading licenses. *See* ''Trading Licenses,'' NYSE Price List 2021 (last updated December 1, 2021), available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.* The Nasdaq Stock Market LLC (''Nasdaq'') annual membership fee is $3,000 plus a monthly $1,250 trading rights fee (together with the annual membership fee, totaling $18,000 per year). *See* ''NASDAQ Membership Fees,'' Nasdaq Price List, available at: *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#membership. See also* Securities Exchange Act Release No. 34–81133 (July 12, 2017), 82 FR 32904 (July 18, 2017) (SR–NASDAQ–2017–065) (discussing the reasonableness of Nasdaq's fees). Finally, Cboe BZX Exchange, Inc. (''Cboe BZX'') charges an annual membership fee of $2,500 plus an additional fee of $350 per month for each additional MPID a member maintains other than their first (*i.e.,* an annual fee of $4,200 per additional MPID). *See* ''Membership Fees'' and ''Market Participant Identifier ('MPID') Fees'' sections of the Cboe BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[7] *See id.*

[8] *See, e.g.,* ''NASDAQ Membership Fees,'' *supra* note 6 ($55 for each Form U–4 filed for the registration of a Representative or Principal, and $55 for each Form U–4 filed for the transfer or re-licensing of a Representative or Principal).

[9] *See* NYSE Membership Directory, available at: *https://www.nyse.com/markets/nyse/membership;* Cboe BZX Form 1 filed November 19, 2021, available at: *https://www.sec.gov/Archives/edgar/vprr/2100/21009368.pdf;* IEX Current Members list, available at: *https://exchange.iex.io/resources/trading/current-membership/.*

[10] Securities Exchange Act Release No. 34–50700 (November 22, 2004), 69 FR 71255, 71267–68 (December 8, 2004) (File No. S7–40–04).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] 15 U.S.C. 78f(b)(8).

Exchange's proposed membership fees will be lower than the cost of membership on other exchanges,[13] and therefore, may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. The proposed fee change will not impact intermarket [sic] competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

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)(ii) of the Act[14] and Rule 19b–4(f)(2)[15] 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 shall 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.* Please include File Number SR–MEMX–2021–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2021–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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–MEMX–2021–19 and should be submitted on or before February 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00489 Filed 1–12–22; 8:45 am]

BILLING CODE 8011–01–P

[13] *See supra* note 6.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93928; File No. SR–FINRA–2021–034]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Section 4 of Schedule A to the FINRA By-Laws Relating to the Continuing Education Fees

January 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend Section 4 of Schedule A to the FINRA By-Laws to: (1) Revise the fee for the Regulatory Element of continuing education (''CE''); (2) establish the fee for individuals who elect to maintain their qualification following the termination of a registration category through the Maintaining Qualifications Program (''MQP''); and (3) make a technical change to clarify that the fee for failing to timely appear for a scheduled qualification examination appointment and for cancelling or rescheduling a qualification examination close to the scheduled appointment date equally applies to online administrations of qualification examinations.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

By-Laws of the Corporation

* * * * *

Schedule A to the By-Laws of the Corporation

* * * * *

Section 4—Fees

(a) through (b) No Change.

(c) The following fees shall be assessed to each individual who takes an examination as described below. These fees are in addition to the registration fee described in paragraph (b) and any other fees that the owner of an examination that FINRA administers may assess.

* * * * *

(1) through (2) No Change.

(3) There shall be a service charge equal to the examination or Regulatory Element session fee assessed to each individual who, having made an appointment for [a specific time and place for] a*n* [test center-based] administration of an examination listed above or *a test center-based* Regulatory Element session, fails to timely appear for such appointment or cancels or reschedules such appointment within two business days prior to the [test center] appointment date.

(4) There shall be a service charge equal to one-half of the examination or Regulatory Element session fee assessed to each individual who, having made an appointment for [a specific time and place for] a*n* [test center-based] administration of an examination listed above or *a test center-based* Regulatory Element session, cancels or reschedules such appointment three to 10 business days prior to the [test center] appointment date.

(d) through (e) No Change.

(f)*(1)* There shall be a session fee of *$18* [$55] assessed to each individual who completes the Regulatory Element of the Continuing Education requirements pursuant to FINRA rules.

(2) There shall be assessed to each individual electing to participate in the continuing education program under Rule 1240(c) a fee of $100 for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee.

(g) through (i) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold.[5] In addition, the amendments provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual CE through a new program, the MQP.[6] The annual Regulatory Element requirement will become effective on January 1, 2023; eligible individuals can make their election to participate in the MQP beginning on January 31, 2022.[7]

FINRA currently charges a fee of $55 to each individual who completes the Regulatory Element. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA is proposing amendments to Section 4 of Schedule A to the FINRA By-Laws to revise the fee for the Regulatory Element from $55 to $18.[8] The proposed $18 annual fee is comparable to the current $55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed $18 annual fee as an individual who holds a single registration).

Further, in conjunction with the amendments to adopt the MQP, FINRA is proposing amendments to Section 4 of Schedule A to the FINRA By-Laws to charge an annual fee of $100 to each MQP participant.[9] The proposed annual fee would be a flat fee, regardless of the number of registrations for which an individual elects to remain qualified under the MQP (that is, an individual who elects to remain qualified for multiple registrations under the MQP would be subject to the same proposed $100 annual fee as an individual who elects to remain qualified for a single registration under the MQP). The proposed annual fee would be assessed at the time an eligible individual elects to participate in the MQP and thereafter annually each year that the individual continues in the MQP. Eligible individuals who elect to participate in the MQP within two years from the termination of a registration category would be assessed any accrued annual fee.[10]

Finally, FINRA is proposing amendments to Section 4 of Schedule A to the FINRA By-Laws to make a technical change to clarify that the administrative fee for failing to timely appear for a scheduled appointment and for cancelling or rescheduling a qualification examination close to the scheduled appointment date equally applies to online administrations of qualification examinations. FINRA qualification examinations are currently administered in test centers as well as online. Similar to test-center

[5] *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

[6] *See supra* note 5. Currently, individuals must requalify by examination if they have not reregistered within two years after their registrations have been terminated (''the two-year qualification period''). Individuals may also seek to obtain a waiver of the applicable qualification examination(s). MQP participants will have a maximum of five years following the termination of a representative or principal registration category to reregister with FINRA without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions of the MQP. Among other conditions, MQP participants will be required to complete annual MQP content consisting of a combination of Regulatory Element content and Practical Element content developed by FINRA and the Securities Industry/Regulatory Council on Continuing Education.

[7] *See Regulatory Notice* 21–41 (November 17, 2021) announcing the SEC approval and effective dates of the amendments.

[8] The annual Regulatory Element fee is set forth in proposed Section 4(f)(1) of Schedule A to the FINRA By-Laws. *See also* FINRA Rule 1240(a) (Regulatory Element).

[9] The annual MQP fee is set forth in proposed Section 4(f)(2) of Schedule A to the FINRA By-Laws. *See also* FINRA Rule 1240(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category).

[10] Eligible individuals must make their election to participate in the MQP at the time of their Form U5 (Uniform Termination Notice for Securities Industry Registration) submission or within two years from the termination of a registration category. Individuals who elect to participate in the MQP at the later date will be required to complete, within two years from the termination of the registration category, any CE that becomes due under the MQP between the time of their Form U5 submission and the date that they commence their participation in the MQP.

administrations of qualification examinations, candidates must schedule an appointment and satisfy other requirements to take a qualification examination online.[11] Likewise, there is an administrative fee for failing to timely appear for a scheduled online appointment and for cancelling or rescheduling a qualification examination close to the scheduled online appointment date.[12]

FINRA has filed the proposed rule change for immediate effectiveness. However, the proposed annual MQP fee will be implemented on January 31, 2022 to coincide with the date that eligible individuals can begin making their election to participate in the MQP. In addition, the proposed revised fee for the Regulatory Element will be implemented on January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[13] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

Proposed Fees

As described above, FINRA is proposing to charge an annual fee of $18 for completing the Regulatory Element requirement and an annual fee of $100 to each MQP participant.[14] The proposed fees are based on the use of a particular service by registered persons and are therefore use-based fees as that term was used in FINRA's 2020 comprehensive fee filing.[15] FINRA employs use-based fees for some of the specific services and data it provides to members and the public in support of its regulatory mission.[16]

With respect to the Regulatory Element, in 2019, FINRA delivered approximately 202,600 Regulatory Element sessions and charged a fee of $55 per session.[17] These sessions produced approximately $11.1 million in (gross) revenue. In 2023, when the annual Regulatory Element requirement is in effect, FINRA anticipates delivering approximately 626,000 annual sessions. Assuming the proposed $18 fee is in effect, the annual Regulatory Element requirement would produce approximately $11.3 million in revenue. Revenue is nearly the same in 2019 as is anticipated for 2023 since the reduction in the session fee and the increase in the number of sessions are expected to balance each other.

With respect to the MQP, in 2023, when the MQP has been in effect for an entire year,[18] FINRA expects that approximately 38,000 individuals would be enrolled in the MQP.[19] Assuming the proposed $100 fee is in effect, the MQP would produce approximately $3.8 million in revenue. Changes in the assumptions, for example concerning the projected number of program participants, may have a significant impact on the projected aggregate revenue over time.

Reasonableness of the Proposed Fees

FINRA believes that the proposed fees are reasonable. With respect to the Regulatory Element, as discussed above, revenue is nearly the same in 2019 as is anticipated for 2023 since the reduction in the session fee and the increase in the number of sessions are expected to balance each other. Further, FINRA's annual costs for developing, maintaining and delivering the Regulatory Element are also expected to remain fairly constant over this period. Thus, the proposed annual fee of $18 will produce similar annual revenues and provide a similar annual contribution to FINRA's overall regulatory operations as the current Regulatory Element program for which member firms pay $55 every three years on behalf of their registered persons. The annual Regulatory Element will serve the same function as the current Regulatory Element program, and the amount of content completed in a three-year, annual cycle, is expected to be comparable to what most registered persons are currently completing every three years.

With respect to the MQP, the proposed fee is designed to recover the systems and operational costs of establishing the annual MQP, and the annual costs for developing, maintaining and delivering the annual MQP content, which, as noted earlier, will include a combination of Regulatory Element content and Practical Element content.[20] The proposed fee is also expected to provide a contribution to FINRA's overall regulatory operations as with the Regulatory Element fee. As explained in FINRA's 2020 comprehensive fee filing, it is not feasible to associate a direct affiliated revenue stream for each of FINRA's programs, and thus numerous operations and services must be funded by other revenue sources, which include both general regulatory assessments and use-based fees.[21] The contribution from the proposed MQP fee in each year is anticipated to be similar to or less than that of the current (and proposed) Regulatory Element program as a share of revenue raised. For comparison purposes, FINRA reviewed state-level information on the annual cost of continuing education for other financial service providers and found that the

[11] Additional information regarding the online appointment process is available at *https://www.finra.org/registration-exams-ce/qualification-exams/testonline.*

[12] Further information regarding the rescheduling and cancellation policy is available at *https://www.finra.org/registration-exams-ce/qualification-exams/cancellation-policy.*

[13] 15 U.S.C. 78*o*–3(b)(5).

[14] The $100 fee would provide each MQP participant with all the content required of that participant, including the Regulatory Element content.

[15] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592, 66594 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–032).

[16] *See* 85 FR 66594 n.14.

[17] The analysis uses data from 2019 and expected for 2023. The year 2019 was indicative of historical program performance. The year 2019 also pre-dates a change from FINRA's proprietary delivery platform to a vendor-supplied learning management system and one-time costs associated with changes to the format, content and frequency of the Regulatory Element. The year 2023 is the first year that the annual Regulatory Element requirement will be in effect.

[18] Given that eligible individuals can begin making their election to participate in the MQP on January 31, 2022, 2023 will be the first fiscal year that the proposed annual MQP fee would be in effect for the entire year.

[19] FINRA estimates that approximately 90,000 individuals end their registration with all firms with which they are registered in a typical year. Among them, FINRA estimates that approximately 40,500 individuals (or 45 percent) do not reregister within two years of terminating their registrations and would therefore need to participate in the MQP to be able to reregister with FINRA without having to requalify by examination or having to obtain an examination waiver. FINRA expects that out of these individuals, approximately 8,100 individuals (or 20 percent) would likely choose to participate in the MQP to maintain their qualification. After adding approximately 15,000 individuals who may terminate their permissive registrations in 2023 and instead elect to participate in the program, as well as approximately 14,850 individuals who may have terminated their registrations between 2020 to 2022 and who elect to join the program, FINRA estimates that the total number of individuals who would participate in the program in 2023 to be approximately 38,000 individuals.

[20] *See supra* note 6. FINRA expects that the number of individuals who will participate in the MQP each year (approximately 38,000 individuals in 2023) will be significantly smaller than the population of registered persons, which, as noted below, is currently approximately 620,000 individuals.

[21] *See* 85 FR 66599–600 (including the discussion of the role of oversight, transparency and rebates in providing cost discipline). A portion of the proposed annual fee for the MQP will replace the contribution to FINRA's overall regulatory operations from qualification examinations that will no longer be taken.

proposed annual fee of $100 is generally lower.

The Proposed Fees are Equitable and Not Unfairly Discriminatory

FINRA believes that the proposed fees are equitable and not unfairly discriminatory. With respect to the Regulatory Element, the requirement to complete Regulatory Element content on an annual basis will be applicable to every registered person based on the same terms and they will pay the same proposed fee. With respect to the MQP, all eligible individuals who elect to participate in the MQP to maintain their qualification for a terminated registration category will be subject to the same terms and will pay the same proposed fee. In addition, FINRA believes that the proposed fee for the MQP is low enough that individuals who expect to obtain meaningful benefits from the MQP will not be discouraged from participating due to the fee.

Further, as explained above, the proposed fees are use-based fees. The SEC has stated its belief that a ''use-based approach is consistent with equitable distribution of fees'' and approved use-based fees when reasonably related to costs.[22] As discussed above, the proposed use-based fees are reasonably related to costs. The proposed fees will cover the cost of developing, maintaining and delivering the annual Regulatory Element content and the annual MQP content and the systems and operational costs of establishing and managing the annual Regulatory Element and the annual MQP. The proposed fees in each year are anticipated to provide a contribution to FINRA's overall regulatory operations as a share of revenue raised that is similar to or less than that of the current Regulatory Element program.

B.Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

Regulatory Need

FINRA previously established the regulatory need for the annual Regulatory Element and the annual MQP.[23] This filing addresses the fees for those programs.

Regulatory Element

Economic Baseline

All FINRA registered persons must take the Regulatory Element two years after they initially became registered and then every three years ongoing. In 2015, FINRA transitioned the delivery of the Regulatory Element to an online platform (CE Online), which allows individuals to complete the content online at a location of their choosing, including their private residence.[24] The transition in 2015 to CE Online reduced the associated Regulatory Element fee from $100 to $55 per individual, which is the current fee.

The population of FINRA registered persons is approximately 620,000 individuals.[25] FINRA delivered approximately 202,600 Regulatory Element sessions in 2019. FINRA expects to deliver approximately 204,000 Regulatory Element sessions in 2021.

Economic Impacts

FINRA previously considered the economic impacts of the Regulatory Element program.[26] The proposed fee is slightly less than one-third of the $55 fee that is currently paid every three years for the Regulatory Element. Thus, the proposed rule change impacts the timing of payments but leaves the total collected over three years essentially unchanged. In addition, instead of taking the Regulatory Element two years after first becoming registered, individuals would be required to complete the Regulatory Element one year after first becoming registered. This would result in an extra one-time fee.

The change in timing may necessitate some small adjustments among certain firms and individuals. For example, small firms with a stable number of registered persons for which previously no registered persons took the Regulatory Element in some years will see a shift from a varying annual expense to a flat annual expense. Large firms are less likely to see this effect, since they are more likely to have registered persons taking the Regulatory Element every year under the current program. If firms pay the Regulatory Element fee and do not reduce compensation or other benefits, there would be no financial impact on individuals from these changes. If individuals pay the Regulatory Element fee, then they will see a shift from a varying annual expense to a flat annual expense.

Alternatives Considered

In establishing the proposed fee, FINRA sought to minimize changes in the fees paid over three years by firms and individuals while covering program costs and maintaining the contribution of the Regulatory Element to FINRA's overall regulatory operations. FINRA considered a range of possible fees and found that the proposed fee and annual revenue come within narrow ranges of meeting these goals.

MQP

Economic Baseline

The economic baseline for the proposed fee is the existing requalification requirements and the fees and costs to individuals and their potential employers relating to those requirements.[27] As stated earlier, under the current regime, individuals generally have a two-year window from the termination of their registration(s) to reregister without having to requalify by examination or having to obtain an examination waiver. Requalification imposes costs in the form of time spent preparing for and taking the applicable examinations, potential limitations to the activities permitted to be conducted until the requalification is completed, opportunity costs for the individual and the potential employers in terms of lost business, and the direct registration costs.[28] Member firms may also

[22] *See* Securities Exchange Act Release No. 72280 (May 29, 2014), 79 FR 32351, 32353 (June 4, 2014) (Order Approving File No. SR–FINRA–2014–018) (approving fees for ATS data that varied according to use and discussing the SEC's prior approval of similar use-based TRACE fees).

[23] *See* Securities Exchange Act Release No. 92183 (June 15, 2021), 86 FR 33427, 33432–33436 (June 24, 2021) (Notice of File No. SR–FINRA–2021–015).

[24] *See Regulatory Notice* 15–28 (August 2015).

[25] *See* 2020 FINRA Industry Snapshot, available at *https://www.finra.org/sites/default/files/2020-07/2020-industry-snapshot.pdf.*

[26] *See supra* note 23.

[27] *See* FINRA Rule 1210.08 (Lapse of Registration and Expiration of SIE).

[28] The current fees for FINRA qualification examinations are available at *https://www.finra.org/registration-exams-ce/qualification-exams.* In order to requalify for a registration, an individual may need to repeat the Securities Industry Essentials (SIE) examination as well as a representative- or principal-level qualification examination. Thus, the direct cost of requalifying for a single registration, such as the General Securities Representative registration, could range from $300 to $380 (for both the SIE and Series 7); requalifying for two registrations, such as the General Securities Representative and Investment Banking

experience material costs when they are not able to retain qualified experienced persons because of professional and personal events that require such individuals to take an extended leave of absence from the industry.

As noted above, the population of FINRA-registered persons is approximately 620,000 individuals.[29] In recent years, out of the approximately 620,000 individuals, approximately 90,000 individuals end their registration with all firms with which they are registered at some point during the year. Out of these, approximately half do not reregister and are considered to have left the securities industry.

Economic Impacts

FINRA previously considered the economic impacts of the MQP.[30] As discussed above, the proposed fee of $100 will permit recovery of the costs for the development, maintenance and delivery of the MQP content and the systems and operational costs of establishing and managing the MQP. The proposed fee will also provide for a contribution to FINRA's overall regulatory operations.

The proposed $100 annual fee is imposed on individuals following the termination of a registration category.[31] As such, FINRA anticipates that the proposed fee will not impose costs on member firms.

Participating in the MQP is voluntary, so individuals will pay the fee when the anticipated benefits outweigh the costs. Potential beneficiaries are not limited to individuals who under the current baseline requalify and reregister between two and five years after their registrations are terminated. Some individuals who currently do not terminate their registrations, and others who terminate their registrations and never reregister, may also benefit from the option provided by the MQP and paying the proposed $100 fee.

Alternatives Considered

In establishing the proposed fee, FINRA sought to minimize the burden to individuals who would elect to participate in the MQP while covering program costs and maintaining the contribution of the testing and CE programs to FINRA's overall regulatory operations. FINRA considered a range of possible fees and found that the proposed fee and annual revenue come within narrow ranges of meeting these goals.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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) of the Act [32] and paragraph (f)(2) of Rule 19b–4 thereunder.[33] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2021–034 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–FINRA–2021–034. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2021–034 and should be submitted on or before February 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00490 Filed 1–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–512, OMB Control No. 3235–0570]

Proposed Collection; Comment Request; Extension: Form N–CSR

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–CSR (17 CFR 249.331 and 274.128) is a combined reporting form

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Representative registrations, could range from $600 to $680 (for the SIE, Series 7 and Series 79). The qualification examination fees used in the examples above are based on the revised fees that will go into effect on January 1, 2022. *See supra* note 15.

[29] *See* 2020 FINRA Industry Snapshot, available at *https://www.finra.org/sites/default/files/2020-07/2020-industry-snapshot.pdf.*

[30] *See supra* note 23.

[31] In the event of a partial termination, some firms may determine to reimburse individuals who elect to remain qualified for a terminated registration through the MQP.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

[34] 17 CFR 200.30–3(a)(12).

used by registered management investment companies (''funds'') to file certified shareholder reports under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). Specifically, Form N–CSR is to be used for reports under section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–29(b)(2)) and section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), filed pursuant to rule 30b2–1(a) under the Investment Company Act (17 CFR 270.30b2–1(a)). Reports on Form N–CSR are to be filed with the Securities and Exchange Commission (''Commission'') no later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1). The information filed with the Commission permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The current total annual burden hour inventory for Form N–CSR is 181,167 hours.[1] The hour burden estimates for preparing and filing reports on Form N–CSR are based on the Commission's experience with the contents of the form. The number of burden hours may vary depending on, among other things, the complexity of the filing and whether preparation of the reports is performed by internal staff or outside counsel.

The Commission's new estimate of burden hours that will be imposed by Form N–CSR is as follows:

TABLE 1—SUMMARY OF REVISED BURDEN HOURS FOR REPORTS ON FORM N–CSR

	Funds and filings			Annual time burden (hours)	
	Number of funds (A)	Number of annual filings (B)	Number of total filings (C) = (A) × (B)	Hour burden per fund per filing (D)	Total annual hour burden (E) = (C) × (D)
Form N–CSR	[2] 14,654	2	29,308	7.75	227,137

In total, the Commission estimates it will take 227,137 burden hours per year for all funds to prepare and file reports on Form N–CSR. Commission staff estimates that the annual cost of outside services associated with Form N–CSR is approximately $203 per fund and the total annual external cost burden for Form N–CSR is $5,949,524.[3]

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the information collection requirements of Form N–CSR is mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John R. Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

All submissions should refer to File Number 270–512. This file number should be included on the subject line if email is used. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov*). All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Dated: January 10, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00589 Filed 1–12–22; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based on the following calculation: 179,443 (previous burden estimate) + 1,724.5 (additional internal burden) = 181,167.5 hours.

[2] This estimate is based on the number of registered management companies as calculated by the filing type: 1,403 N–1A registrants (13,248 funds); 693 N–2 registrants (691 funds); 5 N–3 registrants (14 funds); 417 N–4 registrants (418 funds); 235 N–6 registrants (236 funds); 47 N–8B–2 registrants (47 funds).

[3] This estimate is based on the following calculation: 14,654 funds × $203 per filing × 2 filings per year = $5,949,524.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–792; OMB Control No. 3235–0739]

Proposed Collection; Comment Request; Extension: Order Granting a Conditional Exemption Under the Securities Exchange Act of 1934 From the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds (17 CFR 240.10b–10(a)). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 10b–10 under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) generally requires broker-dealers to provide customers with specified information relating to their securities transactions at or before the completion of the transactions. Exchange Act Rule 10b–10(b), however, provides an exception from this requirement for certain transactions in money market funds that attempt to maintain a stable net asset value when no sales load or redemption fee is charged. The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly, rather than immediate, basis, subject to the conditions. Amendments to Rule 2a–7 (17 CFR 270.2a–7) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) among other things, means, absent an exemption, broker-dealers would not be able to continue to rely on the exception under Exchange Act Rule 10b–10(b) for transactions in money market funds operating in accordance with Investment Company Act Rule 2a–7(c)(1)(ii).[1]

In 2015, the Commission issued an Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 From The Confirmation Requirements of Exchange Act Rule 10b–10(a) For Certain Transactions In Money Market Funds (''Order'')[2] which allows broker-dealers, subject to certain conditions, to provide transaction information to investors in any money market fund operating pursuant to Investment Company Act Rule 2a–7(c)(1)(ii) on a monthly basis in lieu of providing immediate confirmations as required under Exchange Act Rule 10b–10(a) (''the Exemption''). Accordingly, to be eligible for the Exemption, a broker-dealer must (1) provide an initial written notification to the customer of its ability to request delivery of immediate confirmations consistent with the written notification requirements of Exchange Act Rule 10b–10(a), and (2) not receive any such request to receive immediate confirms from the customer.

As of December 31, 2020, the Commission estimates there are approximately 154 broker-dealers that clear customer transactions or carry customer funds and securities who would be responsible for providing customer confirmations. The Commission estimates that the cost of the ongoing notification requirements would be minimal, approximately 5% of the initial burden which was previously estimated to be 36 hours per broker-dealer, or approximately 1.8 hours per broker-dealer per year, to provide ongoing notifications, or a total burden of 277 hours annually for the 154 carrying broker-dealers.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 10, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–00587 Filed 1–12–22; 8:45 am]

BILLING CODE 8011–01–P

[1] *See generally* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408, Investment Advisers Act Release No. 3616, Investment Company Act Release No. 30551 (June 5, 2013), 78 FR 36834, 36934 (June 19, 2013); *see also* Exchange Act Rule 10b–10(b)(1), 17 CFR 240.10b–10(b)(1) (limiting alternative monthly reporting to money market funds that attempt to maintain a stable NAV).

[2] *See* Order Granting a Conditional Exemption Under the Securities Exchange Act of 1934 From the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds, Exchange Act Release No. 34–76480 (Nov. 19, 2015), 80 FR 73849 (Nov. 25, 2015).

SELECTIVE SERVICE SYSTEM

Reasonable Accommodation, Religious Exception, and Medical Exception Health Records

AGENCY: Selective Service System.

ACTION: Notice of new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Selective Service System (SSS) is issuing a public notice of its intent to create a Privacy Act System of Records titled, ''Reasonable Accommodation, Religious Exception, and Medical Exception Health Records.'' This System of Records notice (SORN) describes Selective Service's collection, maintenance, and use of records related to requests for reasonable accommodation under Title VII of the Civil Rights Act of 1964 or the applicable provisions of the Americans with Disabilities Act as applied to the Federal Government through the Rehabilitation Act and the Religious Freedom Restoration Act of 1993. This newly established system will be included in the SSS inventory of record systems.

DATES: Please submit comments on or before 30 days after date of publication in the **Federal Register**. This new system is effective upon publication in today's **Federal Register**, with the exception of the routine uses, which are effective 30 days after date of publication in the **Federal Register**.

ADDRESSES: Written comments and recommendations should be sent to *Daniel.Mira@sss.gov* or to the Selective Service System, Mr. Daniel Mira, Senior Agency Official for Privacy, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Mira, Senior Agency Official for Privacy, Office of Information Technology, Selective Service System, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

SUPPLEMENTARY INFORMATION: Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, signed September 9, 2021, establishes mandatory requirements for Federal executive agencies to implement a program to require COVID–19 vaccinations for Federal employees, with some exceptions as required by law. Additionally, Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, signed September 9, 2021, establishes requirements for Federal executive agencies to implement workplace safety protocols for contractors and subcontractors to protect the health and safety of the Federal workforce and members of the public. SSS is implementing these requirements to

ensure the safety of its workforce and visitors to its facilities and sponsored events.

A report on this new system has been sent to OMB, the Chairman, Committee on Government Reform and Oversight, U.S. House of Representatives; and Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate as required by the Privacy Act.

If changes are made based on the SSS review of comments received, the SSS will publish a subsequent notice.

This system of records is maintained by the SSS and contains personal information about individuals from which information is retrieved by an individual's name or identifier.

The notice for this System of Records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the routine uses. This notice also includes the business address of the SSS official who will inform interested persons of the procedures whereby they may gain access to and request amendment of records pertaining to them.

The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency System of Records from unauthorized disclosure and to ensure that information is current and accurate for its intended use and that adequate safeguards are provided to prevent misuse of such information.

SYSTEM NAME:

Reasonable Accommodation, Religious Exception, and Medical Exception Health Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Selective Service System, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

SYSTEM MANAGER(S):

Mr. Daniel Mira, Senior Agency Official for Privacy, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The collection and maintenance of accommodation records is authorized by the Rehabilitation Act, 29 U.S.C. 791, and Title VII of the Civil Rights Act, 42 U.S.C. 2000e, as well as Executive Order 13164 and 29 CFR 1605 and 1614.

PURPOSE(S) OF THE SYSTEM:

This system is to maintain records necessary and relevant to SSS activities responding to and mitigating high-consequence public health threats, including, but not limited to: COVID–19 or diseases and illnesses relating to a public health emergency, pandemic, or other high-consequence public health threat. The President's September 9, 2021, Executive Order 14043, requires all Federal workers to be vaccinated, except in limited circumstances as required by law. Accordingly, this System of Records is designed to collect records related to vaccination status, including records related to the processing of requests from employees, applicants for employment who are seeking a reasonable accommodation based upon disability under the Rehabilitation Act or for a religious belief, observance, or practice under Title VII of the Civil Rights Act of 1964 for the vaccination requirement contained in Executive Order 14043, or the Religious Freedom Restoration Act of 1993, 42 U.S.C. chapter 21B; or other applicable law.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes individuals who request reasonable accommodations exemptions for the COVID–19 vaccine requirement and agency officials processing or making reasonable accommodation assessments and decisions. These records also include information on authorized individuals, such as a family member, health professional, or other representatives submitting the request on behalf of an individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to reasonable accommodation exceptions, medical or religious, from the COVID–19 vaccine requirement. These records may include but are not limited to:

1. Name;
2. Individual requester's status as an applicant, current or former employee, or other status;
3. Individual requester's occupational series and grade level for which reasonable accommodation had been requested;
4. Contact information such as work or personal address, phone number, and email address;
5. Date a request was submitted verbally or in writing;
6. Documented requests for different type(s) of reasonable accommodation requested;
7. How the requested accommodation would assist in job performance;
8. Supervisor's name, address, and contact information;
9. Name and contact information of a family member, health professional, or other representative submitting a request on behalf of an individual;
10. Medical documentation about a disability or medical condition, or other appropriate supporting information submitted or required to process the request;
11. Records on religious beliefs, observances or practices including descriptions of employee's belief, observance or practice, medicines or medical products that are used or not used by an employee due to a belief, observance or practice;
12. Name, title, and contact information of SSS officials processing, deciding or referring a request for reasonable accommodation;
13. Agency decisions including whether a request was granted or denied, reasons for a denial, date a request was approved or denied, date a reasonable accommodation was provided to the individual;
14. The amount of time taken to process a request, including whether the recommended time frames were met as outlined in the reasonable accommodation procedures;
15. Any other information that is submitted by individuals in support of requests for reasonable accommodation, or that is necessary and relevant to support agency assessment and decision regarding the request.

RECORD SOURCE CATEGORIES:

Records may be obtained from SSS personnel who may provide relevant information on information related to a request for an exception from the COVID–19 vaccination requirement. Information may also be sourced from personnel at medical facilities, or from existing systems of records, including but not limited to OPM/GOVT–10, ''Employee Medical File System Records,'' (75 FR 35099; June 21, 2010), and modified on November 30, 2015 (80 FR 74815).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the SSS may disclose information contained in this System of Records without the consent of the persons mentioned herein if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. To appropriate medical facilities, or Federal, State, local, Tribal, territorial or

foreign government agencies, to the extent permitted by law, for the purpose of protecting the vital interests of individual(s), including to assist the United States Government in responding to or mitigating high-consequence public health threats, or diseases and illnesses relating to a public health emergency.

2. To determine eligibility for access to SSS offices or sites, or other Federal facilities.

3. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

4. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the SSS determines that the records are arguably relevant to its proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

5. To contractors and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an SSS function related to this System of Records.

6. A record on an employee or contractor from this System of Records may be disclosed as a routine use to a Federal, State, local, territorial, Tribal, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of that individual, letting a contract, or issuing a license, grant, or other benefit.

7. A record on an employee or contractor from this System of Records may be disclosed as a routine use to a Congressional office in response to an inquiry from the Congressional office made at the request of that individual.

8. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

9. To appropriate agencies, entities, and persons when (1) the SSS suspects or has confirmed that there has been a breach of the System of Records. (2) the SSS has determined that as a result of the suspected or confirmed breach there is a risk of harm to an individual(s), the SSS (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 SSS efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. To another Federal agency or Federal entity, when the SSS determines that information from this System of Records is 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.

11. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the SSS and meeting related reporting requirements.

12. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

13. A record from this System of Records may be disclosed as a routine use to SSS paid experts or consultants, and those under contract with the SSS on a ''need-to-know'' basis for purpose within the scope of the pertinent SSS task. This access will be granted to a SSS contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All records in this System of Records are maintained and in compliance with applicable executive orders, statutes, and agency implementing recommendations. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media. Paper records are maintained in a secure, access controlled room, with access limited to authorized personnel. To the extent applicable, to ensure compliance with Americans with Disabilities Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act of 2008, medical information must be maintained on separate forms and in separate medical files and be treated as a confidential medical record.

SSS has ITSP–64 for Media Protection which establishes a uniform process for protecting and storing PII and media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records will be retrieved by any of the categories of records, including name, location, date of vaccine exception request, or work status.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are temporary and are maintained and destroyed in accordance with National Archives and Records Administration General Records Schedule 2.7 Employee Health and Safety Records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, multi-factor authentication, database permissions, encryption, firewalls, audit logs, network system security monitoring, and software controls.

SSS has ITSP–11 for Access Control This policy applies to all SSS information users, owners, contractors and custodians, as well as access to any SSS information resources. Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the SSS Rules of Behavior.

RECORDS ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORDS PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this System of Records contains information about them should write to Mr. Daniel Mira, Senior Agency Official

for Privacy and comply with procedures contained in the SSS Privacy Act Regulation 32 CFR part 1665.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Daniel Mira,

Deputy Chief Information Officer, Senior Agency Official for Privacy.

[FR Doc. 2022–00621 Filed 1–12–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17286 and #17287; KENTUCKY Disaster Number KY–00087]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4630–DR), dated 12/12/2021.

Incident: Severe Storms, Straight-line Winds, Flooding, and Tornadoes.

Incident Period: 12/10/2021 through 12/11/2021.

DATES: Issued on 01/06/2022.

Physical Loan Application Deadline Date: 02/10/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/12/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Kentucky, dated 12/12/2021, is hereby amended to establish the incident period for this disaster as beginning 12/10/2021 through 12/11/2021.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–00520 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17303 and #17304; KENTUCKY Disaster Number KY–00088]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of Kentucky

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–4630–DR), dated 01/06/2022.

Incident: Severe Storms, Straight-line Winds, Flooding, and Tornadoes.

Incident Period: 12/10/2021 through 12/11/2021.

DATES: Issued on 01/06/2022.

Physical Loan Application Deadline Date: 03/07/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/06/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/06/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Caldwell, Christian, Fulton, Graves, Hart, Hickman, Hopkins, Logan, Lyon, Marion, Marshall, Muhlenberg, Ohio, Taylor, Todd, Warren

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17303 C and for economic injury is 17304 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–00519 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request

AGENCY: Small Business Administration.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB), for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each collection of information before submission to OMB and to allow 30 days for public comment in response to the notice. This information collection is currently approved under emergency procedures, which included waiver of notice. This publication complies with the PRA requirement to publish that previously waived notice.

DATES: Submit comments on or before March 31, 2022.

ADDRESSES: Send all comments related to this **Federal Register** Notice electronically to *7apaycheckloanprogramquestions@sba.gov* with the Subject Line: ''SBA Form 3512 Comments.''

FOR FURTHER INFORMATION CONTACT: Adrienne Grierson, Program Manager, at *adrienne.grierson@sba.gov*; 202–205–6573, or Curtis B. Rich, Management Analyst, 202–205–7030; *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, authorizes SBA to guarantee loans made by banks or other financial institutions under a new temporary 7(a) program titled the ''Paycheck Protection Program'' (''PPP'') to small businesses, certain non-profit organizations, veterans' organizations, Tribal business concerns, independent contractors and self-employed individuals adversely impacted by the Coronavirus Disease (COVID–19) Emergency. This authority initially

expired on August 8, 2020. The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), Public Law 116–260, renewed SBA's authority to make PPP loans until March 31, 2021, and added authority for second draw PPP loans under § 7(a)(37) of the Small Business Act. The program authority was further extended until June 30, 2021, by the PPP Extension Act of 2021, Public Law 117–6.

Any lender that has made PPP loans can use this information collection (SBA Form 3512) to request (1) reinstatement of a PPP loan that was cancelled in SBA's ETRAN system due to the lender's data input error, and/or (2) correction of the lender's data input error in the SBA Loan Approval Amount of a PPP loan on ETRAN or the Paycheck Protection Platform, subject to availability of funds. The form contains examples of the types of lender requests for reinstatement or correction that can be submitted on the form. SBA will rely on the information submitted on this form to evaluate the lender's request. SBA obtained emergency approval for this form from OMB which expires on December 31, 2021.

(a) Solicitation of Public Comments

SBA is requesting comments on (i) Whether the collection of information is necessary for the agency to properly perform its functions; (ii) whether the burden estimates are accurate; (iii) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (iv) whether there are ways to enhance the quality, utility, and clarity of the information.

No comments were received during the 60-day comment period which ended on August 30, 2021.

(b) Summary of Proposed Information Collection

Title: Lender Certification for Reinstatement or Correction of Paycheck Protection Program (PPP) Loan.

Form Number: SBA Form 3512.

OMB Control Number: 3245–0415.

Description of respondents: Lenders that participate in SBA's Paycheck Protection.

Estimated number of respondents: 1,350.

Estimated time per response: 30 minutes.

Total estimated annual responses: 4,000.

Total estimated annual hour burden: 2,000 hours.

Curtis Rich,

Management Analyst.

[FR Doc. 2022–00517 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

DATES: Tuesday, February 1, 2022 at 2:00 p.m. EST.

ADDRESSES: Meeting will be held via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: Rachel Karton, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *Rachel.newman-karton@sba.gov;* 202–619–1816.

If anyone wishes to be a listening participant or would like to request accommodations, please contact Rachel Karton at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

Purpose

The purpose of the meeting is to discuss the following issues pertaining to the SBDC Program:

- SBA|OSBDC Leadership Transition
- Strategy for Increasing Board Awareness and Understanding of SBDC Program
- Board Leadership Election

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–00508 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17286 and #17287; KENTUCKY Disaster Number KY–00087]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4630–DR), dated 12/12/2021.

Incident: Severe Storms, Straight-line Winds, Flooding, and Tornadoes.

Incident Period: 12/10/2021 and continuing.

DATES: Issued on 12/24/2021.

Physical Loan Application Deadline Date: 02/10/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/12/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of KENTUCKY, dated 12/12/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Marion.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Boyle, Nelson, Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–00516 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17301 and #17302; WASHINGTON Disaster Number WA–00100]

Presidential Declaration of a Major Disaster for the State of Washington

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4635–DR), dated 01/05/2022.

Incident: Flooding and Mudslides.

Incident Period: 11/13/2021 through 11/15/2021.

DATES: Issued on 01/05/2022.

Physical Loan Application Deadline Date: 03/07/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/05/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/05/2022, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas (Physical Damage and Economic Injury Loans): Clallam, Skagit, and Whatcom Counties and the Lummi Nation, Nooksack Indian Tribe, and Quileute Tribe.

Contiguous Counties (Economic Injury Loans Only):

Washington: Chelan, Island, Jefferson, Okanogan, Snohomish.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.660
Businesses without Credit Available Elsewhere	2.830
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.830
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17301 6 and for economic injury is 17302 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–00518 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17286 and #17287; KENTUCKY Disaster Number KY–00087]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Kentucky

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4630–DR), dated 12/12/2021.

Incident: Severe Storms, Straight-line Winds, Flooding, and Tornadoes.

Incident Period: 12/10/2021 and continuing.

DATES: Issued on 12/22/2021.

Physical Loan Application Deadline Date: 02/10/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/12/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Kentucky, dated 12/12/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Barren.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Monroe.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–00512 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Generic Clearance for Formative Data Collections for Evaluation, Research, and Evidence-Building

ACTION: 60-Day notice of information collection and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval from the Office of Management and Budget (OMB) for a generic clearance to allow the SBA to conduct a variety of formative data collections with more than nine respondents. The formative evaluation, research, and other evidence-building data collections will inform future studies but will not be highly systematic nor intended to be statistically representative. Findings from these formative studies will not be generalized to the broader population and are not intended to inform major decisions. In compliance with the Paperwork Reduction Act (PRA) of 1995, the SBA is soliciting public comment on the specific aspects of the information collection described above.

DATES: Submit comments on or before March 14, 2022.

ADDRESSES: Send all comments to Shay Meinzer, Lead Program Evaluator, *shay.meinzer@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Shay Meinzer, Lead Program Evaluator, Office of Program Performance, Analysis, and Evaluation, Small Business Administration, *shay.meinzer@sba.gov,* 202–539–1429, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The SBA intends to design and conduct evidence-building activities of SBA programs. SBA's evidence-building activities include formative evaluations of existing programs, process, and new initiatives; logic model development and testing; process or journey mapping; research syntheses; survey, questionnaire, and metric development; analysis; and foundational fact-finding through descriptive and exploratory studies.

Under this generic clearance, the SBA would engage in a variety of formative and exploratory data collections with SBA grantees, program and potential program providers and participants, researchers, practitioners, and other stakeholders to fulfill the following goals:

- Maintain a rigorous and relevant evaluation and research agenda,
- inform the development of SBA's evidence-building activities,

• inform the delivery of targeted assistance and workflows related to program and grantee processes,

• inform the development and refinement of recordkeeping and communication systems,

• plan for provision of programmatic or evidence-capacity-related training or technical assistance,

• obtain grantee or stakeholder input on the development or refinement of program logic models, evaluations, and performance measures, and

• test activities to strengthen programs in preparation for summative evaluations.

The SBA envisions using a variety of techniques including but not limited to semi-structured small group discussions or focus groups, questionnaires and surveys, interviews (*e.g.,* in-person, video, and telephone), and cognitive interviews (*e.g.,* in-person, video and audio collections) to reach these goals. Participation in formative data collections is strictly voluntary, and personal identifiable information is not collected.

Following standard OMB requirements, the SBA will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification, and any supplementary documents specific to the unique information collection. OMB should review within 10 days of receiving each change request.

The information collected in this effort will not be the primary subject of any published SBA reports. However, information may be made public through methodological appendices or footnotes, reports on instrument development, instrument user guides, descriptions of respondent behavior, and other publications or presentations describing findings of methodological interest. When necessary, results will be labeled as formative or exploratory. The aggregated results of this work may be prepared for presentation at professional meetings or disseminated in evaluation reports, research papers, and professional journals.

Respondents: The populations to be studied include SBA grantees, program and potential program providers and participants, researchers, practitioners, and other stakeholder groups involved in SBA programs, experts in fields pertaining to SBA evaluation and research, or others involved in conducting SBA evaluation, research, or evidence-building projects.

ANNUAL BURDEN ESTIMATE

Description of data collection method	Estimated number of respondents	Frequency of response	Estimated annual responses	Estimated average minutes/ response	Estimated annual hour burden
Small group discussions or focus groups	240	1	240	90	360
Surveys or questionnaires	450	1	450	30	225
Interviews	135	1	135	60	135
Cognitive interviews	75	1	75	90	112.5
Total	900		900		832.5

Solicitation of public comments: The SBA requests comments on (a) whether the collection of information is necessary for the agency to perform its functions properly; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information collected. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2022–00564 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17296 and #17297; ARKANSAS Disaster Number AR–00120]

Presidential Declaration of a Major Disaster for the State of Arkansas

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4633–DR), dated 12/23/2021.

Incident: Severe Storms and Tornadoes.

Incident Period: 12/10/2021 through 12/11/2021.

DATES: Issued on 12/23/2021.

Physical Loan Application Deadline Date: 02/22/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/23/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/23/2021, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Craighead, Jackson, Mississippi, Poinsett, Woodruff

Contiguous Counties (Economic Injury Loans Only):

Arkansas: Crittenden, Cross, Greene, Independence, Lawrence, Monroe, Prairie, Saint Francis, White

Missouri: Dunklin, Pemiscot

Tennessee: Dyer, Lauderdale, Tipton

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438

	Percent
Businesses with Credit Available Elsewhere	5.660
Businesses without Credit Available Elsewhere	2.830
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.830
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17296 C and for economic injury is 17297 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–00510 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17299 and #17300; COLORADO Disaster Number CO–00136]

Presidential Declaration of a Major Disaster for the State of Colorado

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4634–DR), dated 12/31/2021.

Incident: Wildfires and Straight-line Winds.

Incident Period: 12/30/2021 and continuing.

DATES: Issued on 12/31/2021.

Physical Loan Application Deadline Date: 03/01/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/30/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/31/2021, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Boulder.

Contiguous Counties (Economic Injury Loans Only):

Colorado: Broomfield, Gilpin, Grand, Jefferson, Larimer, Weld.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.660
Businesses without Credit Available Elsewhere	2.830
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.830
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17299 5 and for economic injury is 17300 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–00514 Filed 1–12–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11627]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Traitor, Survivor, Icon: The Legacy of La Malinche'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Traitor, Survivor, Icon: The Legacy of La Malinche'' at the Denver Art Museum, Denver, Colorado; Albuquerque Museum, Albuquerque, New Mexico; the San Antonio Museum of Art, San Antonio, Texas; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–00495 Filed 1–12–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11625]

Notice of Public Meeting in Preparation for International Maritime Organization HTW 8 Meeting

The Department of State will conduct a public meeting at 10:00 a.m. on Wednesday, February 2, 2022, by way of teleconference. Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants. To RSVP, participants should contact the meeting coordinator, Mr. Charles Bright, by email at *Charles.J.Bright@uscg.mil.* To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 877 239 87#.

The primary purpose of the meeting is to prepare for the eighth session of the International Maritime Organization's (IMO) Sub-Committee on Human Element, Training and Watchkeeping (HTW 8) to be held remotely from Monday, February 7, 2022, to Friday, February 11, 2022.

The agenda items to be considered at the public meeting mirror those to be considered at HTW 8, and include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Validated model training courses
—Role of the human element
—Reports on unlawful practices associated with certificates of competency
—Implementation of the Standards of Training, Certification and Watchkeeping (STCW) Convention
—Development of amendments to the Revised guidelines for the development, review and validation of model courses (MSC–MEPC.2/Circ.15/Rev.1)
—Comprehensive review of the 1995 STCW–F Convention
—Development of amendments to the STCW Convention and Code for the use of electronic certificates and documents of seafarers
—Development of measures to ensure quality of onboard training as part of the mandatory seagoing service required by the STCW Convention
—Development of measures to facilitate mandatory seagoing service required under the STCW Convention
—Development of training provisions for seafarers related to the Ballast Water Management (BWM) Convention
—Biennial status report and provisional agenda for HTW 9
—Election of Chair and Vice-Chair for 2023
—Any other business
—Report to the Maritime Safety Committee

Please note: The IMO may, on short notice, adjust the HTW 8 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP and those in attendance at the meeting.

Those who plan to participate may contact the meeting coordinator, Mr. Charles Bright, by email at *Charles.J.Bright@uscg.mil,* by phone at (202) 372–1023, or in writing at 2703 Martin Luther King Jr. Ave. SE Stop 7509, Washington, DC 20593–7509. Any requests for reasonable accommodation must be made at that time. Requests made after January 26, 2022, will be considered but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Emily A. Rose,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2022–00601 Filed 1–12–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–1195]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Financial Responsibility for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to determine if licensees have complied with financial responsibility requirements for maximum probable loss determination (MPL) analysis as set forth in FAA regulations. The FAA is responsible for determining MPL required to cover claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from a Commercial space transportation permitted or licensed activity. The MPL determination forms the basis for financial responsibility requirements issued in a license or permit order.

DATES: Written comments should be submitted by March 14, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Charles Huet, 800 Independence Avenue SW, Room 331, Washington, DC 20591.

By fax: 202–267–5463.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: *Charles.huet@faa.gov;* phone: 202–267–7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0601.

Title: License Requirements for Operation of a Launch Site.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This collection is applicable upon concurrence of requests for conducting commercial launch operations as prescribed in 14 CFR parts 401, *et al.,* Commercial Space Transportation Licensing Regulation. A commercial space launch services provider must complete the Launch Operators License, Launch-Specific License or Experimental Permit in order to gain authorization for conducting commercial launch operations.

The information will be collected per 14 CFR part 440 Appendix A. A permit or license applicant is required to provide the FAA information to conduct maximum probable loss determination. Also, it is a mandatory requirement that all commercial permitted and licensed launch applicants obtain financial coverage for claims by a third party for bodily injury or property damage. FAA is responsible for determining the amount of financial responsibility required using maximum probable loss determination. The financial responsibility must be in place and active for every launch activity. Applicants' launched activity can vary, on average, from once a week to once a year. If there are any significant changes to the launch vehicle that potentially could modify the results of the financial responsibility determined, the permitted and licensed applicant must provide updated information to the FAA. The FAA will use the updated collected information and revise the financial responsibility results.

The following is summary of the information required to conduct an MPL:

1. Mission description.
- Launch trajectory;
- Orbital inclination; and
- Orbit altitudes (apogee and perigee).

Start Printed Page 30476.

2. Flight sequence.
3. Staging events and the time for each event.

4. Impact locations.
5. Identification of the launch site facility, including the launch complex on the site, planned date of launch, and launch windows.
6. Launch vehicle description.
• General description of the launch vehicle and its stages, including dimensions.
• Description of major systems, including safety systems.
• Description of rocket motors and type of fuel used.
• Identification of all propellants to be used and their hazard classification under the Hazardous Materials.
7. Payload.
8. Flight safety system.

Respondents: Approximately 10 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 1,000 hours.

James Hatt,

Space Policy Division Manager, Commercial Space Transportation, Federal Aviation Administration.

[FR Doc. 2022–00606 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0004]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KALEI KAI (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0004 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0004 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0004, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KALEI KAI is:

—*Intended Commercial use of Vessel:* ''Short sightseeing trips in and around Hawaiian waters, predominantly off the southern coast of Oahu (off Waikiki shoreline).''
—*Geographic Region Including Base of Operations:* ''Hawaii'' (Base of Operations: Honolulu, HI).
—*Vessel Length and Type:* 49.14′ Sail.

The complete application is available for review identified in the DOT docket as MARAD 2022–0004 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0004 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential

under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00545 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0007]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WAVE WALKER (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0007 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0007 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0007, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel WAVE WALKER is:

—*Intended Commercial Use of Vessel:* ''Private trip up to 6 passengers.''
—*Geographic Region Including Base of Operations:* ''Puerto Rico.'' (Base of Operations: Fajardo, PR)
—*Vessel Length and Type:* 26.0″ Motor (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2022–0007 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0007 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00548 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0285]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KONKLMA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0285 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0285 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0285, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KONKLMA is:

—*Intended Commercial Use of Vessel:* ''The intended use of the vessel is for fishing charters.''

—*Geographic Region Including Base of Operations:* ''Puerto Rico.'' (Base of Operations: Fajardo, PR)

—*Vessel Length and Type:* 35′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2021–0285 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0285 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without

edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00541 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0276]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: HUNKY DORY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0276 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0276 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0276, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel HUNKY DORY is:

—*Intended Commercial Use of Vessel:* ''Pleasure charters of up to 6 passengers using Daniel Cox MMC of 100 tonnage.''

—*Geographic Region Including Base of Operations:* ''Washington.'' (Base of Operations: Seattle, WA)

—*Vessel Length and Type:* 36.6′ Motor (Trawler)

The complete application is available for review identified in the DOT docket as MARAD 2021–0276 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0276 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible

through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00531 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0284]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BEYOND (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0284 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0284 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0284, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BEYOND is:

—*Intended Commercial Use of Vessel:* ''Chartering passengers.''
—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Key West, FL)
—*Vessel Length and Type:* 37′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2021–0284 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0284 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00540 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0022]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BEAR (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0022 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0022 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0022, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BEAR is:

—*Intended Commercial Use of Vessel:* ''Hauling passengers from Leland MI to the North Manitou Shoal Light Station, and back, for ongoing restoration work and for tours.''

—*Geographic Region Including Base of Operations:* ''Michigan'' (Base of Operations: Leland, MI)

—*Vessel Length and Type:* 30′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0022 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0022 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00553 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0005]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PENJA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0005 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0005 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0005, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PENJA is:

—*Intended Commercial Use of Vessel:* ''Recreational charters.''

—*Geographic Region Including Base of Operations:* ''Florida, Rhode Island, Massachusetts, Connecticut, Maine, New Hampshire, New York, North Carolina, South Carolina, Georgia, New Jersey, Pennsylvania, Virginia, and Maryland.'' (Base of Operations: Bal Harbour, FL)

—Vessel Length and Type: 72.3′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2022–0005 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0005 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00546 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0006]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ANNDRIANNA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0006 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0006 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0006, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ANNDRIANNA is:

—*Intended Commercial Use of Vessel:* ''Term charter.''

—*Geographic Region Including Base of Operations:* ''Florida, Georgia, North Carolina, South Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.'' (Base of Operations: Ft. Lauderdale, FL)

—*Vessel Length and Type:* 78.6′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0006 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0006 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00547 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0001]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MIRRACLE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0001 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0001 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0001, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MIRRACLE is:

—*Intended Commercial Use of Vessel:* ''Recreational charters.''
—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Hillsboro Beach, FL)
—*Vessel Length and Type:* 76.4′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0001 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0001 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00542 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0024]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: HOYA SAXA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0024 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0024 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0024, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel HOYA SAXA is:

—*Intended Commercial Use of Vessel:* ''Captain charters for sunset cruises or longer overnight charters.''

—*Geographic Region Including Base of Operations:* ''Florida, Rhode Island, Massachusetts, Maine, Connecticut, New York, New Jersey'' (Base of Operations: Miami, FL).

—*Vessel Length and Type:* 78′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2022–0024 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0024 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00551 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0021]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PERGOLA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0021 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0021 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0021, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PERGOLA is:

—*Intended Commercial Use of Vessel:* ''Local charter, California coastal areas.''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Los Angeles, CA)

—*Vessel Length and Type:* 63′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0021 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0021 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00554 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0283]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BETWEEN THE SHEETS (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0283 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0283 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0283 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BETWEEN THE SHEETS is:

—*Intended Commercial Use of Vessel:* ''6 passenger max, sail boat charterl be used to carry passengers for hire on short term sight-seeing trips.''

—*Geographic Region Including Base of Operations:* ''California.'' (Base of Operations: Benicia, CA)

—*Vessel Length and Type:* 49.2′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2021–0283 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0283 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00539 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0278]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LULU QUEEN (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0278 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0278 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0278, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LULU QUEEN is:

—*Intended Commercial Use of Vessel:* ''Sightseeing charter. Carrying passengers for hire.''

—*Geographic Region Including Base of Operations:* ''Puerto Rico.'' (Base of Operations: Fajardo, PR)

—*Vessel Length and Type:* 45′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2021–0278 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0278 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00533 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0279]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LIL' TOOT (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0279 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0279 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0279, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LIL' TOOT is:

—*Intended Commercial Use of Vessel:* ''Passenger excursion.''

—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Ruskin, FL)

—*Vessel Length and Type*: 26′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0279 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0279 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00534 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0280]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ISLAND GIRL (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0280 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0280 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0280, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ISLAND GIRL is:

—*Intended Commercial Use of Vessel:* ''Day charters with 7 to 12 passengers up to 150 days total per calendar year.''

—*Geographic Region Including Base of Operations:* ''Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida.'' (Base of Operations: Jupiter, FL)

—*Vessel Length and Type:* 44′ Motor (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2021–0280 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0280 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00535 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0009]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: CHIL (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0009 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0009 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0009, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel CHIL is:

—*Intended Commercial Use of Vessel:* ''The vessel will be chartered to passengers in South Florida for daytrips, sightseeing tours and/or sunset cruises.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Miami Beach, FL)

—*Vessel Length and Type:* 55.0′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0009 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0009 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00550 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0003]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MARIA ELENA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0003 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0003 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0003, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MARIA ELENA is:

—*Intended Commercial use of Vessel:* ''The owners intend to rent the boat on limited occasions for passengers to enjoy overnight stays on the moored vessel at the dock. There will be no charters or cruising. The boat will not be used for any purposes other than overnight stays in harbor.''

—*Geographic Region Including Base of Operations:* ''Mississippi and Alabama'' (Base of Operations: Bay St. Louis, MS).

—*Vessel Length and Type:* 43.0′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2022–0003 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0003 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00544 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0281]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: AMI (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0281 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0281 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0281, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel AMI is:

—*Intended Commercial Use of Vessel:* ''Day trips. Sight seeing, custom cruises.''

—*Geographic Region Including Base of Operations:* ''Washington.'' (Base of Operations: Friday Harbor, WA)

—*Vessel Length and Type:* 33′ Motor (Trawler)

The complete application is available for review identified in the DOT docket as MARAD 2021–0281 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0281 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00536 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0282]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ALOKOY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0282 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0282 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0282, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ALOKOY is:

—*Intended Commercial Use of Vessel:* ''Vessel will be used to carry passengers for hire on short term sight-seeing trips.''

—*Geographic Region Including Base of Operations:* ''California.'' (Base of Operations: Marina del Rey, CA)

—*Vessel Length and Type:* 42′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0282 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0282 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00537 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0277]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: CHILLIN' (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0277 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0277 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0277, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel CHILLIN' is:

—*Intended Commercial Use of Vessel:* ''Charters for up to 12 people on inland waters in the State of Washington.''

—*Geographic Region Including Base of Operations:* ''Washington.'' (Base of Operations: Bellevue, WA)

—*Vessel Length And Type:* 85′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0277 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0277 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00532 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0020]

Request for Comments of a Previously Approved Information Collection: Determination of Fair and Reasonable Rates for Carriage of Agriculture Cargoes on U.S. Commercial Vessels—46 CFR

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 19, 2021.

DATES: Comments must be submitted on or before February 14, 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Albert L. Bratton III, (202) 366–5769, Office of Business Finance, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Determination of Fair and Reasonable Rates for Carriage of Agriculture Cargoes on U.S. Commercial Vessels—46 CFR.

OMB Control Number: 2133–0514.

Type of Request: Renewal of Previously approved collection.

Abstract: 46 U.S.C. 55305 and the Food Security Act of 1985 require that at least 50% of U.S. government sponsored agriculture bulk and packaged cargoes be shipped on U.S.-flag vessels to the extent that such vessels are available at fair and reasonable rates. Pursuant to 46 CFR part 381, Government agencies must comply with the cargo preference laws and must submit data to the Maritime Administration (MARAD) on U.S. and foreign-flag carriage of preference cargoes under their control. Part 382 requires U.S. operators to submit specific data to MARAD regarding fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. The collection of vessel data contributes toward the U.S. Department of Transportation's strategic goal of National Security. In addition, this data collection requires U.S.-flag operators to submit vessel-operating costs and capital costs data to MARAD officials on an annual basis. This information is needed by MARAD to establish fair and reasonable guideline rates for carriage of specific cargoes on U.S. vessels.

Respondents: U.S. citizens who own and operate U.S.-flag vessels.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 35.

Total Estimated Number of Responses: 62.

Frequency of Collection: Annually.

Estimated Times per Respondent: 1–4 hours.

Total Estimated Number of Annual Burden Hours: 170.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00555 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0275]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ZEPHYR (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0275 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0275 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0275, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ZEPHYR is:

—*Intended Commercial Use of Vessel:* ''Recreational charters.''

—*Geographic Region Including Base of Operations:* ''North Carolina, South Carolina, Florida, Delaware, Georgia, New Jersey, New York, Pennsylvania, Virginia, Maryland, Massachusetts, Maine, and Rhode Island.'' (Base of Operations: Stuart, FL)

—*Vessel Length and Type:* 100′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0275 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0275 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00530 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0023]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PINK BATEAU (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0023 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0023 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0023, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PINK BATEAU is:

—*Intended Commercial Use of Vessel:* ''The intended use of the vessel is to run a small local business onboard the vessel providing curated experiences to Seattle guests and locals. The interior and exterior of the boat will be designed by Kelley Moore and all renovation, canvas work, related marine operations will be done by local WA state business boat vendors.''

—*Geographic Region Including Base of Operations:* ''Washington'' (Base of Operations: Seattle, WA)

—*Vessel Length and Type:* 43′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0023 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0023 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00552 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0010]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DELTA TANGO (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0010 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0010 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0010, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DELTA TANGO is:

—*Intended Commercial Use of Vessel:* ''Sailboat charters.''
—*Geographic Region Including Base of Operations:* ''Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Puerto Rico.'' (Base of Operations: Kemah, TX)
—*Vessel Length and Type:* 44.0′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2022–0010 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0010 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00556 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0011]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: IMAGINE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0011 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0011 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0011, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you

if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel IMAGINE is:

—*Intended Commercial Use of Vessel:* ''Sailboat charters.''
—*Geographic Region Including Base of Operations:* ''Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Puerto Rico.'' (Base of Operations: Kemah, TX)
—*Vessel Length and Type:* 44.0′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2022–0011 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0011 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00557 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0002]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KISMET (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0002 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0002 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0002, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email

address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KISMET is:

—*Intended Commercial use of Vessel:* ''Recreational charters.''
—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Miami, FL).
—*Vessel Length and Type:* 40.0′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2022–0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0002 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00543 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0008]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ALTHEA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0008 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0008 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2022–0008, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you

if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ALTHEA is:

—*Intended Commercial Use of Vessel:* ''three-hour daytime sails with licensed 100 ton captain.''
—*Geographic Region Including Base of Operations:* ''Michigan.'' (Base of Operations: Traverse City, MI)
—*Vessel Length and Type:* 46.0′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0008 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0008 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00549 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0272]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PADRINO (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 14, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0272 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0272 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0272, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PADRINO is:

—*Intended Commercial Use of Vessel:* ''Private vessel charters, passengers only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska)'' (Base of Operations: West Palm Beach, FL).

—*Vessel Length and Type:* 84.2′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0272 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0272 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–00529 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2022–0008]

Agency Information Collection Activities; Notice and Request for Comment; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments for a reinstatement of a previously approved information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) to reinstate a previously approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995 (PRA), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval on generic clearance for qualitative feedback on agency service delivery.

DATES: Written comments should be submitted by March 14, 2022.

ADDRESSES: You may submit comments, identified by Docket No. DOT–NHTSA–2022–0008 through one of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey

Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to 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 *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Walter Culbreath, NIO–0300, (202) 366–1566, Office of the Chief Information Officer, W51–316, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including 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. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 2127–0682.

Form Number(s): To be determined by specific collections.

Type of Request: Reinstatement of a previously approved information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: Executive Order 12862 directs Federal agencies to provide the highest quality service possible to the public. This proposed information collection provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

This feedback collected through this information collection will provide insights into customer or stakeholder perceptions, experiences and expectations; provide early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. The feedback will allow for ongoing, collaborative and actionable communication between the Agency and its customers and stakeholders. This information collection will also allow feedback to contribute directly to the improvement of program management.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections under this request will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Description of the Need for the Information and Proposed Use of the Information

Improving agency programs requires ongoing assessment of service delivery—systematic review of the operation of a program compared to a set of explicit or implicit standards—as a means of contributing to the continuous improvement of the those programs. The Agency will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements in service delivery based on that feedback. The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information were not collected, vital feedback from customers and stakeholders on the Agency's services would be unavailable and the Agency would not know if adjustments would be warranted.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 113,582.

Frequency: On occasion, per request.

Number of Responses: 113,582.

Estimated Total Annual Burden Hours: 20,204.

The 20,204 annual burden hours requested are based on the number of collections we expect to conduct over the requested period for this clearance.

Estimated Total Annual Burden Cost: $0.

Participation in this collection is voluntary, and there are no costs to respondents beyond the time spent participating in the surveys.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways f to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:49; and DOT Order 1351.29.

Issued in Washington, DC, on January 10, 2022.

William Berry,

Director, Office of IT Compliance.

[FR Doc. 2022–00528 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before February 14, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 7, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21315–N	Umbra Lab, Inc	173.185(e)	To authorize the transportation in commerce of prototype lithium batteries contained in equipment by motor vehicle. (mode 1).
21316–N	Cryoconcepts, LP	171.2(k), 172.200, 172.300, 172.400, 172.700(a).	To authorize the transportation in commerce of DOT 3AL cylinders containing carbon dioxide using alternative hazard communication. Additionally, the application requests authorization for cylinders charged to a pressure of less than 29.0 psig to be shipped as a hazardous material. (modes 1, 2, 3).
21317–N	Spaceflight, Inc	173.185(e)(3)	To authorize the transportation in commerce of satellites containing prototype or low production lithium batteries in alternative packaging by motor vehicle. (mode 1).

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21318–N	Mercedes-Benz Ag	172.101(j), 173.185(b)(1)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21320–N	Amazon.com, Inc	173.220(d), 173.156(a), 173.159a(c), 173.185(c).	To authorize the transportation in commerce of small lithium batteries, non-spillable batteries, and battery powered vehicles in alternative packaging (shrink-wrapped overpacks). (modes 1, 2).
21321–N	Jaco, Inc	172.200, 172.700(a)	To authorize the manufacture, mark, sale, and use of packagings for lithium batteries without requiring shipping papers, emergency response information and dangerous goods awareness training. (modes 1, 2, 3).
21322–N	Federal Express Corporation	175.75(c), 175.75(d)	To authorize the transportation in commerce of certain hazardous materials with relief from the quantity limitations and cargo location requirements under 49 CFR 175.75 (c) and (d). (mode 4).

[FR Doc. 2022–00449 Filed 1–12–22; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0117 (Notice No. 2022–01)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on this information collection pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget.

DATES: Interested persons are invited to submit comments on or before March 14, 2022.

ADDRESSES: You may submit comments identified by the Docket No. PHMSA–2021–0117 (Notice No. 2022–01) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number (PHMSA–2021–0117) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Requests for a copy of an information collection should be directed to Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

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

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as ''CBI.'' Please mark each page of your submission containing CBI as ''PROPIN.'' PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Steven Andrews or Shelby Geller, Standards and Rulemaking Division and addressed to the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or to *steven.andrews@dot.gov.* Any commentary that PHMSA receives which is not specifically designated as ''CBI'' will be placed in the public docket for this notice.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. This information collection is contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since this information collection was last approved. The following is provided for this information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total

annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for this information collection activity and will publish a notice in the **Federal Register** upon OMB's approval.

PHMSA requests comments on the following information collection:

Title: Flammable Hazardous Materials by Rail Transportation.

OMB Control Number: 2137–0628.

Summary: This OMB control number is used for information and recordkeeping requirements pertaining to the sampling and testing certification, routing analysis, and incident reporting for flammable liquids by rail transportation. Rail carriers, shippers, PHMSA's Office of Hazardous Materials Safety (OHMS), the Federal Railroad Administration (FRA), and the Association of American Railroads (AAR) may use this information to ensure that rail tank cars transporting flammable liquids are properly classified, ensure trains are routed appropriately, and collect all relevant incident data.

This OMB control number is being submitted for renewal and includes the following information collections and associated burden hours:

Information collection	Respondents	Responses	Hours per response	Total hours
Sampling and Testing Plan Burden for Subsequent Year Revision	1,801	1,801	10	18,010
Routing—Collection by Segment for Class II Railroads	10	10	40	400
Routing—Collection by Segment for Class III Railroads	160	160	40	6,400
Routing Analysis Burden for Class II Railroads	10	50	16	800
Routing Analysis Burden for Class III Railroads	160	320	8	2,560
Routing Security Analysis Burden for Class II Railroads	10	40	12	480
Routing Security Analysis Burden for Class III Railroads	64	32	4	128
Tank Car Retrofit Burden	50	50	0.5	25
Crude Oil Incident Reporting	17	17	2	34
Oil Spill Response Plans—Submit Reports	73	14.6	0.5	7.3
Oil Spill Response Plan—Class I	7	7	162	1,134
Oil Spill Response Plan—Class II	11	11	54	594
Oil Spill Response Plan—Class III	55	55	36	1,980
Notification Plans—Maintenance	73	2,190	1	2,190
Notification Plans—DOT Request	73	15.33	1	15.33

Affected Public: Shippers and carriers of petroleum liquids transported by rail.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 2,574.

Total Annual Responses: 4,773.

Total Annual Burden Hours: 34,758.

Frequency of Collection: On occasion.

Issued in Washington, DC, on January 7, 2022.

William A. Quade,

Deputy Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2022–00575 Filed 1–12–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; 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 January 5, 2022, 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.

Individual

1. DODIK, Milorad, Republika Srpska, Bosnia and Herzegovina; DOB 12 Mar 1959; POB Banja Luka, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Male (individual) [BALKANS] [BALKANS–EO14033].

Designated pursuant to section 1(a)(iii) of Executive Order 14033 of June 8, 2021, ''Blocking Property and Suspending Entry into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans,'' 86 FR 31079, 3 CFR 14033 (E.O. 14033) for being responsible for or complicit in, or having directly or indirectly engaged in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals and pursuant to section 1(a)(v) for being responsible for or complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

Entity:

1. ALTERNATIVNA TELEVIZIJA D.O.O. BANJA LUKA (a.k.a. ALTERNATIVNA TELEVIZIJA DRUSTVO ZA INFORMISANJE D.O.O. BANJA LUKA; a.k.a. ALTERNATIVNE TELEVIZIJE; a.k.a. ''ALTERNATIVE TV''; a.k.a. ''ATV''), Ulica Gunduliceva 33, Banja Luka 78000, Bosnia and Herzegovina; Organization Established Date 1997; Tax ID No. 4400946870008 (Bosnia and Herzegovina); Registration Number 1–9857–00 (Bosnia and Herzegovina) [BALKANS–EO14033] (Linked To: DODIK, Milorad).

Designated pursuant to section 1(a)(vii) of E.O. 14033 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Milorad Dodik.

Dated: January 5, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–00576 Filed 1–12–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 3319

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Low-Income Taxpayer Clinics 2022 Grant Application Package and Guidelines.

DATES: Written comments should be received on or before March 14, 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 publication and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Low-Income Taxpayer Clinics 2022 Grant Application Package and Guidelines.

OMB Number: 1545–1648.

Publication Number: 3319.

Abstract: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award. The IRS will review the information provided by applicants to determine whether to award grants for the Low-Income Taxpayer Clinics.

Current Actions: There are no changes being made to burden associated with the collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not for-profit institutions.

Estimated Number of Respondents: 130.

Estimated Time per Respondent: 43 hrs., 50 mins.

Estimated Total Annual Burden Hours: 9,338.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 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: January 5, 2022.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–00497 Filed 1–12–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Notice of Availability; Data Collection Effort for E.O. 13985—Increasing Equity in Procurement Spending Barrier Assessment

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a voluntary survey relating to potential barriers that underserved communities and individuals may face in taking advantage of agency procurement and contracting opportunities.

ADDRESSES: The survey is available at *https://survey.alchemer.com/s3/6659553/OSBDU-Data-Collection-Effort-for-E.O.-13985.*

FOR FURTHER INFORMATION CONTACT: Melissa Jenkins, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of the Treasury, by email at *Melissa.Jenkins@Treasury.gov* or by telephone: 202–622–8213.

SUPPLEMENTARY INFORMATION: The Department of the Treasury remains committed to ensuring maximum inclusion in the Department's federal procurement opportunities. In accordance with Executive Order 13985 of January 20, 2021 Section 5(b) ''Potential barriers that underserved communities and individuals may face in taking advantage of agency procurement and contracting opportunities,'' the U.S. Department of the Treasury, is inviting industry resource partners to provide input on what they observe to be barriers based on their experience for small disadvantaged businesses, service-disabled veteran owned small businesses, contractors in HUBZones, minority-owned businesses, and women-owned businesses through Departmental procurement opportunities. The link to the survey is found in the **ADDRESSES** section of this notice.

In accordance with the Paperwork Reduction Act of 1995 (5 U.S.C. 3501 *et seq.*), the survey has been reviewed and approved by the Office of Management and Budget and assigned control number 1505–0231. An agency may not conduct or sponsor and a person is not required to respond to a collection of

information unless it displays a valid control number.

Melissa M. Jenkins,

U.S. Department of the Treasury, WOSB Program Manager/In-Reach & Outreach/ Underserved Communities, Office of Small & Disadvantaged Business Utilization (OSDBU).

[FR Doc. 2022–00473 Filed 1–12–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Meaningful Access Information Collections

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before February 14, 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for Meaningful Access Information Collections.

OMB Control Number: 1520–0009.

Type of Review: Extension of a currently approved collection.

Description: A court order was issued in *American Council of the Blind* v. *Paulson,* 591 F. Supp. 2d 1 (D.D.C. 2008) (''*ACB* v. *Paulson*'') requiring the Department of the Treasury and BEP to ''provide meaningful access to United States currency for blind and other visually impaired persons, which steps shall be completed, in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury . . . .''

In compliance with the court's order, BEP intends to meet with blind and visually impaired persons and request their feedback about tactile features that BEP is considering for possible incorporation into the next U.S. paper currency redesign. BEP employees will attend national conventions and conferences for disabled persons, as well as focus groups and other meetings. At those gatherings, BEP employees will invite blind and visually impaired persons to provide feedback about certain tactile features being considered for inclusion in future United States currency paper designs. In the past BEP contracted with specialists in the field of tactile acuity to develop a methodology for collecting the feedback. This same or substantially similar methodology will be used to continue this information collection.

Over the next three years, the BEP anticipates undertaking a variety of new information collection activities related to BEP's continued efforts to provide meaningful access to U.S. paper currency for blind and visually impaired persons. Following standard OMB requirements, for each information collection that BEP proposes to undertake under this generic clearance, the OMB will be notified at least two weeks in advance and provided with a copy of the information collection instrument along with supportive materials. The BEP will only undertake a new collection if the OMB does not object to the BEP's proposal.

Form: None.

Affected Public: Individuals and households, Businesses and other for-profits, Not-for-profit Institutions.

Estimated Number of Respondents: 650.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 650.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 650 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 10, 2022.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–00602 Filed 1–12–22; 8:45 am]

BILLING CODE 4840–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on January 27, 2022 on ''CCP Decision-Making and the 20th Party Congress.''

DATES: The hearing is scheduled for Thursday, January 27, 2022, 9:15 a.m.

ADDRESSES: This hearing will be held with panelists and Commissioners participating in-person or online via videoconference. Members of the audience will be able to view a live webcast via the Commission's website at *www.uscc.gov.* Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the first public hearing the Commission will hold during its 2022 report cycle. The hearing will start with an assessment of elite politics in China and expectations for the upcoming 20th Party Congress. Subsequent panels will explore CCP leaders' decision-making and the policy formation process across economic, foreign and security policy, including assessments of relevant personnel and policy bodies.

The hearing will be co-chaired by Commissioners Jeffrey Fiedler and

Derek Scissors. Any interested party may file a written statement by January 27, 2022 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: January 10, 2022.

Christopher P. Fioravante,

Director of Operations and Administration, U.S.-China Economic and Security Review Commission.

[FR Doc. 2022–00562 Filed 1–12–22; 8:45 am]

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Managing Transmission Line Ratings; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM20–16–000; Order No. 881]

Managing Transmission Line Ratings

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising both the *pro forma* Open Access Transmission Tariff and the Commission's regulations under the Federal Power Act to improve the accuracy and transparency of electric transmission line ratings. Specifically, the Commission is requiring: Public utility transmission providers to implement ambient-adjusted ratings on the transmission lines over which they provide transmission service; regional transmission organizations (RTO) and independent system operators (ISO) to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly; public utility transmission providers to use uniquely determined emergency ratings; public utility transmission owners to share transmission line ratings and transmission line rating methodologies with their respective transmission provider(s) and with market monitors in RTOs/ISOs; and public utility transmission providers to maintain a database of transmission owners' transmission line ratings and transmission line rating methodologies on the transmission provider's Open Access Same-Time Information System site or other password-protected website.

DATES: This rule will become effective March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dillon Kolkmann (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8650, *Dillon.kolkmann@ferc.gov*.

Mark Armamentos (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8103, *Mark.armamentos@ferc.gov*.

Ryan Stroschein (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8099, *Ryan.Stroschein@ferc.gov*.

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Appendix B: *Pro Forma* Open Access Transmission Tariff

I. Introduction

1. In this final rule, the Federal Energy Regulatory Commission (Commission) is adopting reforms, pursuant to section 206 of the Federal Power Act (FPA),[1] to the *pro forma* Open Access Transmission Tariff (OATT) and the Commission's regulations to improve the accuracy and transparency of electric transmission line ratings used by transmission providers.[2] As discussed below, we adopt the Commission's proposal in the Notice of Proposed Rulemaking (NOPR) to define a transmission line rating as ''the maximum transfer capability of a transmission line, computed in accordance with a written transmission line rating methodology and consistent with Good Utility Practice,[3] considering the technical limitations on conductors and relevant transmission equipment (such as thermal flow limits), as well as technical limitations of the Transmission System (such as system voltage and stability limits).'' [4]

2. The transfer capability of a transmission line can change with ambient weather conditions. Thus, a transmission line rating can be determined by taking into consideration the physical characteristics of the conductor and making assumptions about ambient weather conditions to determine the maximum amount of power that can flow through a conductor while keeping the conductor under its maximum operating temperature. Conductor temperatures are impacted by a variety of factors,

[1] 16 U.S.C. 824e.

[2] In this final rule, we use transmission provider to mean any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. 18 CFR 37.3 (2021). Therefore, unless otherwise noted, ''transmission provider'' refers only to public utility transmission providers. Furthermore, the term ''public utility'' as found in section 201(e) of the FPA means ''any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter . . .'' 16 U.S.C. 824(e).

[3] The Commission's *pro forma* OATT defines Good Utility Practice as: ''[a]ny of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).'' *Pro forma* OATT section 1.15.

[4] The definition also states, ''Relevant transmission equipment may include, but is not limited to, circuit breakers, line traps, and transformers.'' *Managing Transmission Line Ratings,* Notice of Proposed Rulemaking, 86 FR 6420 (Jan. 21, 2021), 173 FERC ¶ 61,165, at P 85 (2020) (NOPR).

including ambient air temperatures. Increases in ambient air temperatures tend to increase a transmission line's operating temperature and lower a transmission line's rating, while lower ambient air temperatures tend to lower a transmission line's operating temperature and increase the transmission line's rating.

3. Many transmission line ratings are currently calculated based on assumptions about ambient conditions that are not regularly adjusted and therefore do not accurately reflect the near-term transfer capability of the transmission system.[5] For example, when seasonal or static temperature assumptions exceed actual ambient air temperatures, transmission line ratings may understate the near-term transfer capability that the transmission system can actually provide, leading to unnecessarily restricted flows and potentially increased congestion costs. Alternatively, when ambient air temperatures exceed seasonal or static temperature assumptions, transmission line ratings may overstate the near-term transfer capability of the system, creating potential reliability and safety problems. In either case, the continued use of seasonal and static temperature assumptions may result in transmission line ratings that do not accurately represent the transfer capability of the transmission system. We find that transmission line ratings and the rules by which they are established are practices that directly affect the cost of wholesale energy, capacity, and ancillary services, as well as the cost of delivering wholesale energy to transmission customers; thus, we find that inaccurate transmission line ratings result in Commission-jurisdictional rates that are unjust and unreasonable.

4. To address these issues with respect to transmission service in the near term, we adopt, with certain modifications, the NOPR proposal's definition of an ambient-adjusted rating (AAR) as a transmission line rating that: (1) Applies to a time period of not greater than one hour; (2) reflects an up-to-date forecast of ambient air temperature across the time period to which the rating applies; (3) reflects the absence of solar heating during nighttime periods where the local sunrise/sunset times used to determine daytime and nighttime periods are updated at least monthly, if not more frequently; and (4) is calculated at least each hour, if not more frequently.[6] Additionally, we adopt two requirements for greater use of AARs. First, we require that transmission providers—including RTOs/ISOs for transmission service at their seams [7]—use AARs as the basis for evaluation of transmission service requests that will end within 10 days of the request. Second, we require that transmission providers—including RTOs/ISOs for transmission service at their seams—use AARs as the basis for their determination of the necessity of certain curtailment, interruption, or redispatch of transmission service anticipated to occur within those 10 days.

5. To address these issues with respect to transmission service in the longer term, we require that transmission providers use seasonal line ratings as the basis for evaluation of transmission service requests ending more than 10 days from the date of the request. We also require that transmission providers use seasonal line ratings as the basis for the determination of the necessity of curtailment, interruption, or redispatch of transmission service that is anticipated to occur more than 10 days in the future.[8]

6. For both longer term and shorter term transmission service, we adopt exceptions to the AAR and seasonal line rating requirements to accommodate instances in which the transmission line rating of a transmission line is not affected by ambient air temperature and instances in which a transmission provider reasonably determines, consistent with good utility practice, that the use of a temporary alternate rating is necessary to ensure the safety and reliability of the transmission system.[9]

7. In certain situations, using transmission line ratings that are based on factors beyond forecasted ambient air temperatures and the presence or absence of solar heating may lead to greater accuracy. For example, the use of dynamic line ratings (DLRs) presents opportunities for transmission line ratings that may be more accurate than those established with AARs. Unlike AARs, DLRs are based not only on forecasted ambient air temperatures and the presence or absence of solar heating, but also on other weather conditions such as (but not limited to) wind, cloud cover, solar heating intensity (instead of mere daytime/nighttime distinctions used in AARs), and precipitation, and/or on transmission line conditions such as tension or sag. As discussed below, we adopt the NOPR's proposed definition of DLR as a transmission line rating that: (1) Applies to a time period of not greater than one hour; and (2) reflects up-to-date forecasts of inputs such as (but not limited to) ambient air temperature, wind, solar heating intensity, transmission line tension, or transmission line sag.

8. Although some transmission owners have adopted the use of DLRs for individual transmission lines, there is not currently widespread use of DLRs. While DLRs can represent more accurate transmission line ratings than AARs, based on the record in this proceeding, we decline to mandate DLR implementation in this final rule. We instead incorporate the record in this proceeding on DLRs into new Docket No. AD22–5–000, which we open to further explore DLR implementation.

9. One factor that may contribute to the limited deployment of DLRs by transmission owners is that the RTOs/ISOs that operate a large portion of the transmission system in the United States and oversee organized wholesale electric markets may not be able to automatically incorporate frequently updated transmission line ratings such as DLRs into their operating and market models. Although the record does not support a mandate for DLR implementation at this time, we require RTOs/ISOs to establish and maintain the systems and procedures necessary to allow transmission owners in their regions to electronically update transmission line ratings on at least an hourly basis.

10. In addition to reforms to improve the accuracy of transmission line ratings used during normal (pre-contingency) operations,[10] we revise the *pro forma*

[5] Federal Energy Regulatory Commission, Staff Paper, *Managing Transmission Line Ratings,* Docket No. AD19–15–000 (Aug. 2019) (Commission Staff Paper), *https://www.ferc.gov/sites/default/files/2020-05/tran-line-ratings.pdf.*

[6] 18 CFR 35.28(b)(10) (2021); *Pro Forma* OATT attach. M, AAR Definition.

[7] The term ''seam'' is commonly used by the industry to indicate the border between two transmission provider's service territories. Service at the seam can take different forms, such as point-to-point service or market-to-market service.

[8] The use of seasonal line ratings for long-term requests for transmission service and as the basis for the determination of curtailment, interruption, or redispatch is currently standard practice. However, as discussed below, we adopt certain reforms to change seasonal line rating implementation.

[9] Because the new requirements related to AARs and seasonal line ratings are implemented through the new *pro forma* OATT Attachment M, these requirements are placed upon *transmission providers.* However, we recognize that *transmission owners* (not transmission providers) determine transmission line ratings. In many instances, the transmission provider and transmission owner are the same entity. However, below in Section IV.B.2.b, we discuss compliance within RTOs/ISOs, where the transmission provider and transmission owner are separate entities.

[10] The North American Electric Reliability Corporation (NERC) Glossary defines ''normal

Continued

OATT to require transmission providers to use uniquely determined emergency ratings for contingency analysis in the operations horizon and in post-contingency simulations of constraints.[11] Such uniquely determined emergency ratings must also incorporate an adjustment for ambient air temperature and daytime/nighttime solar heating, consistent with our AAR requirements for normal ratings. Most transmission equipment can withstand high currents for short periods of time without sustaining damage. Emergency ratings reflect this technical capability, defining the specific additional current that a transmission line can withstand and for what duration the transmission line can withstand that additional current without sustaining damage. Because emergency ratings reflect this capability, uniquely determined emergency ratings will ensure more accurate transmission line ratings.

11. Finally, we adopt four requirements to enhance transparency. First, we require public utility transmission owners to share transmission line ratings and methodologies with their transmission provider(s) and with market monitors in RTOs/ISOs. Second, we require transmission providers to share their transmission owners' transmission line ratings and methodologies with any transmission provider(s) upon request. Third, we require transmission providers to maintain a database of their transmission owners' transmission line ratings and methodologies on the transmission provider's Open Access Same-Time Information System (OASIS) site or another password-protected website. Fourth, we require transmission providers to post on OASIS or another password-protected website any uses of exceptions or temporary alternate ratings. Availability of this additional information on transmission line ratings and their methodologies will facilitate more cost-effective decisions by transmission customers and more accurate transmission line ratings. We find that these transparency reforms will ensure that prices reflect the true cost of the wholesale service being provided and thereby are necessary to ensure just and reasonable wholesale rates.

12. We require each transmission provider to submit a compliance filing within 120 days of the effective date of this final rule revising their OATT to incorporate *pro forma* OATT Attachment M. We further require that all requirements adopted herein be fully implemented no later than three years from the compliance filing due date.

II. Background

13. In August 2019, Commission staff issued a paper entitled ''Managing Transmission Line Ratings,'' which drew upon Commission staff outreach conducted in spring 2019 with RTOs/ISOs, transmission owners, and trade groups, as well as staff participation in a November 2017 Idaho National Laboratory workshop. The report included background on common transmission line rating approaches, current practices in RTOs/ISOs, a review of pilot projects, and a discussion of potential improvements.[12]

14. On September 10 and 11, 2019, Commission staff convened a technical conference (September 2019 Technical Conference) to discuss what transmission line ratings and related practices might constitute best practices, and what, if any, Commission action in these areas might be appropriate. In particular, the September 2019 Technical Conference covered issues such as: (1) Common transmission line rating methodologies; (2) AAR and DLR implementation benefits and challenges; (3) the ability of RTOs/ISOs to accept and use DLRs; and (4) the transparency of transmission line rating methodologies.[13]

15. In October 2019, the Commission requested comments on questions that arose from the September 2019 Technical Conference.[14] In response, commenters addressed issues related to AARs and DLRs, emergency ratings, and transparency, as discussed below.

16. On November 19, 2020, the Commission issued the NOPR in this proceeding, proposing to amend the *pro forma* OATT and its regulations under the FPA to improve the accuracy and transparency of transmission line ratings.[15] Specifically, the Commission proposed a new *pro forma* OATT Attachment M ''Transmission Line Ratings'' to require transmission providers to implement AARs on the transmission lines over which they provide transmission service. The Commission also proposed revisions to its regulations to require RTOs/ISOs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly and to require transmission owners to share transmission line ratings and transmission line rating methodologies with their transmission provider(s) and, in RTOs/ISOs, with their market monitor(s). The Commission received comments from 56 entities on the NOPR proposals from a diverse set of stakeholders.[16]

III. Need for Reform

A. NOPR Proposal

17. In the NOPR, the Commission preliminarily found that transmission line ratings and the rules by which they are established are practices that directly affect the cost of wholesale energy, capacity, and ancillary services, as well as the cost of delivering wholesale energy to transmission customers. The Commission explained that, because of the relationship between transmission line ratings and costs, inaccurate transmission line ratings may result in Commission-jurisdictional rates that are unjust and unreasonable.[17]

18. The Commission explained that most transmission owners implement seasonal or static transmission line rating methodologies based on conservative, worst-case assumptions, such as high temperatures that are likely to occur over the longer term, but that often do not reflect the true near-term transfer capability of transmission facilities. Thus, the Commission reasoned, seasonal and static line ratings fail to reflect the true cost of delivering wholesale energy to transmission customers, and incorporating near-term forecasts of ambient air temperatures in transmission line ratings would more accurately reflect the actual cost of delivering wholesale energy to transmission customers.[18]

19. Because actual ambient air temperatures are usually not as high as the ambient air temperatures conservatively assumed in seasonal and static line ratings, the Commission

rating'' as: ''[t]he rating as defined by the equipment owner that specifies the level of electrical loading . . . that a system, facility, or element can support or withstand through the daily demand cycles without loss of equipment life.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[11] As discussed below in Section IV.F.2.b, uniquely determined means the ratings are determined based on assumptions that reflect the specific, finite duration of emergency ratings, as opposed to using assumptions used to calculate normal ratings.

[12] Commission Staff Paper, *https://www.ferc.gov/sites/default/files/2020-05/tran-line-ratings.pdf.*

[13] Supplemental Notice of Technical Conference, Docket No. AD19–15–000 (Sep. 4, 2019).

[14] Notice Inviting Post-Technical Conference Comments, Docket No. AD19–15–000 (Oct. 2, 2019).

[15] *Managing Transmission Line Ratings,* Notice of Proposed Rulemaking, 86 FR 6420 (Jan. 21, 2021), 173 FERC ¶ 61,165 (2020) (NOPR).

[16] *See* Appendix A for a list of entities that submitted comments and the shortened names used throughout this final rule to describe those entities.

[17] NOPR, 173 FERC ¶ 61,165 at P 38.

[18] *Id.* P 39.

observed that updating transmission line ratings used in near-term transmission service to reflect actual ambient air temperatures usually results in increased system transfer capability and, in turn, lower costs for consumers. However, the Commission also observed that seasonal and static line ratings can at times assume temperatures that are lower than the actual ambient air temperatures in the short term. In doing so, the Commission noted that seasonal or static transmission line rating methodologies can at times result in transmission line ratings that reflect more transfer capability than physically exists. The Commission observed that this overstatement of transmission line ratings similarly results in wholesale energy rates that fail to reflect the actual cost of delivering wholesale energy to transmission customers, and may also create reliability and safety problems, risk damage to equipment, and prevent occurrences of rates for scarcity pricing or transmission constraint penalty factors.[19]

20. Regarding DLR implementation, the Commission observed that some RTOs/ISOs may rely on software and systems that cannot accommodate transmission line ratings that frequently change, such as DLRs, and that, without reflecting such frequent changes to transmission line ratings, such software may serve as a barrier that prevents transmission owners in RTOs/ISOs from implementing DLRs, which can better reflect the actual transfer capability of the transmission system. The Commission explained that, in addition to ambient air temperature, DLRs incorporate additional inputs, including wind, cloud cover, solar heating, and precipitation, as well as transmission line conditions such as tension and sag. DLRs thereby provide transmission line ratings that are closer to the true thermal transmission line limit than AARs, which can result in rates that even more accurately reflect the costs of delivering wholesale energy to transmission customers than relying on AARs. However, the Commission explained that the potential inability of RTOs/ISOs to automatically accept and use DLRs provided by transmission owners may prevent RTO/ISO markets from benefiting from the more accurate representation of current RTO/ISO system conditions. In turn, by ensuring RTO/ISO market models can incorporate more accurate representations of system conditions when transmission owners use DLRs, RTO/ISO markets would produce prices that more accurately reflect the costs of delivering wholesale energy to transmission customers. For this reason, the Commission also preliminarily found in the NOPR that current transmission line rating practices in RTOs/ISOs that do not permit the acceptance of DLRs from transmission owners may result in rates that do not reflect the actual costs of delivering wholesale energy to transmission customers.[20]

21. Regarding emergency ratings, the Commission found that current transmission line rating practices may fail to use emergency ratings, and in failing to do so, may result in transmission line ratings that do not accurately reflect the near-term transfer capability of the system. This, in turn, may result in rates that do not reflect actual costs of delivering wholesale energy to transmission customers. In support, the Commission stated that transmission owners often develop two sets of transmission line ratings for most facilities: Normal ratings that can be safely used continuously, and emergency ratings that can be used for a specified shorter period of time, typically during post-contingency operations. Because emergency ratings are a more accurate representation of the flow limits over shorter timeframes, the Commission preliminarily found that their use in models of post-contingency flows may produce prices that more accurately reflect actual costs of delivering wholesale energy to transmission customers.[21]

22. Finally, in the NOPR, the Commission preliminarily found that, by preventing transmission providers and, in RTO/ISOs, market monitors from having the opportunity to validate transmission line ratings in situations where a transmission provider serves any transmission owners that are not itself, current levels of transparency into transmission line ratings and transmission line rating methodologies may result in unjust and unreasonable rates. The Commission observed that a consequence of a lack of transparency could be inaccurate near-term transmission line ratings, which may result in rates that do not accurately reflect congestion and reserve costs on the system. As one example, the Commission stated that, without knowing the basis for a given transmission line rating that frequently binds and elevates prices, a transmission provider and/or market monitor cannot determine whether the transmission line rating is accurately calculated and therefore whether unjust and unreasonable wholesale rates are being created through use of inaccurate transmission line ratings.[22]

B. Comments

23. Commenters overwhelmingly agree with the Commission's preliminary finding that transmission line ratings and the rules by which they are established are practices that directly affect the cost of wholesale energy, capacity, and ancillary services, as well as the cost of delivering wholesale energy to transmission customers.[23] Commenters also agree with the Commission's preliminary finding that, because of the relationship between transmission line ratings and wholesale energy costs, inaccurate transmission line ratings may result in Commission-jurisdictional rates that are unjust and unreasonable.[24]

24. The majority of commenters representing state agencies support the Commission's basis for reform. New England State Agencies explain that, because transmission lines are used to control the amount of energy on electric power systems, transmission line ratings affect the price of electric power as well as the reliability of the electric grid.[25] OMS also agrees with the Commission's preliminary finding that transmission line ratings directly affect wholesale energy costs and artificially limit transfers within and between regions, stating that such a conclusion is obvious and correct.[26] OMS further contends that the slow pace of action on this issue by RTOs/ISOs and transmission owners makes the issue ripe for Commission action.[27] Ohio FEA maintains that transmission line ratings have a direct and significant influence on wholesale energy and capacity markets and, therefore, must be accurate. Ohio FEA further argues that inaccurate transmission line ratings may also cause Locational Deliverability Areas (LDAs) to unnecessarily constrain in the

[19] *Id.* P 42.

[20] *Id.* P 43.

[21] *Id.* PP 44–46.

[22] *Id.* P 47.

[23] AEP Comments at 3; Ohio FEA Comments at 6; New England State Agencies Comments at 8; OMS Comments at 6; Potomac Economics Comments at 5; CAISO DMM Comments at 4; SPP MMU Comments at 1–2; R Street Institute Comments at 2; Industrial Customer Organizations Comments at 11–12; TAPS Comments at 5–6; WATT Comments at 3–5; Certain TDU Comments at 4–5; Clean Energy Parties Comments at 2–3; EDFR Comments at 3.

[24] SPP MMU Comments at 1–2; Potomac Economics Comments at 5; CAISO DMM Comments at 4; Industrial Customer Organizations Comments at 11–12; TAPS Comments at 5–6; Certain TDU Comments at 4–5; Clean Energy Parties Comments at 2–3.

[25] New England State Agencies Comments at 8.

[26] OMS Comments at 6.

[27] OMS Reply Comments at 2–3.

capacity market, resulting in higher capacity prices.[28]

25. Each of the commenting market monitors supports the Commission's basis for reform. For example, Potomac Economics agrees with the Commission's finding that inaccurate transmission line ratings may result in rates that are not just and reasonable and notes that facility ratings are used in virtually every aspect of electricity markets and system operations. Potomac Economics further avers that transmission line ratings determine the transmission limits input into market models, which, in turn, determine the commitment and dispatch needed to satisfy load and manage congestion. Potomac Economics further explains that underestimated transmission line ratings cause inefficient operations, higher congestion, reduced transmission availability, higher costs, higher renewable energy curtailments, and a greater perceived need for new transmission facilities.[29] The SPP MMU also agrees with the Commission's assertion that transmission line ratings can directly affect the cost of producing wholesale energy, capacity, and ancillary services, as well as the cost of delivering such products. The SPP MMU explains that the cost of congestion is directly impacted by transmission line ratings and that inaccurate transmission line ratings cause price distortions, which may result in unjust and unreasonable rates.[30] The CAISO DMM also agrees with the Commission's assessment that transmission line ratings and the rules by which they are established directly impact the cost of wholesale energy delivery and related services, explaining that static or seasonal line ratings can lead to increased costs when their assumptions are not realized, which may be inefficient and can result in excess cost paid by load.[31]

26. Other commenters also support the Commission's basis for reform. R Street Institute states that the Commission's problem statement is sound, explaining that transmission line ratings are chronically understated because they do not reflect current weather conditions, and as a result, according to R Street Institute, fail to allow for significant cost savings.[32] Industrial Customer Organizations state that transmission line ratings and associated rules directly affect the cost of wholesale energy, capacity, and ancillary services, and the cost of delivering wholesale energy to transmission customers, and the rulemaking is therefore consistent with the Commission's authority and obligations under the FPA.[33] TAPS states that reliance on static or seasonal line ratings inflicts unnecessary costs on consumers and that AAR deployment can provide significant benefits to consumers.[34] WATT explains that accurate transmission line ratings lower costs for consumers.[35] Certain TDUs assert that enhanced transmission line ratings, including AARs and DLRs, are tools that maximize the efficiency of the existing transmission system and lower costs for consumers.[36]

27. Finally, clean energy and generator representatives also support the Commission's basis for reform.[37] For example, Clean Energy Parties conclude that, due to the impact that transmission line ratings have on wholesale rates requirements, accurate transmission line ratings are consistent with the Commission's mandate under sections 205 and 206 of the FPA.[38]

28. However, NYTOs question the Commission's legal standing to regulate transmission line ratings, noting that the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that there are limits to the Commission's FPA section 206 jurisdiction over ''practices'' and that the term may not include all utility operations.[39] NYTOs note that the Commission's authority to regulate transmission planning was upheld on appeal but that Order No. 1000[40] is not prescriptive; therefore, NYTOs request that the Commission similarly allow utilities to make their own decisions related to advanced line rating technologies.[41]

C. Commission Determination

29. We find that transmission line ratings, and the rules by which they are established, are practices that directly affect the rates for the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce (hereinafter referred to collectively as ''wholesale rates''). Thus, the Commission has jurisdiction over transmission line ratings.[42] We further find that, because of the relationship between transmission line ratings and wholesale rates, inaccurate transmission line ratings result in wholesale rates that are unjust and unreasonable. Accordingly, pursuant to FPA section 206,[43] we conclude that certain revisions to the *pro forma* OATT and the Commission's regulations are necessary to ensure just and reasonable wholesale rates. We adopt most of the reforms proposed in the NOPR, with certain clarifications, as discussed further herein, and revisions to the proposed *pro forma* OATT Attachment M and to the Commission's regulations.

30. We find that transmission line ratings directly affect wholesale rates because transmission line ratings and wholesale rates are inextricably linked. As explained above, transmission line ratings represent the maximum transfer capability of each transmission line. That transfer capability determines the quantity of energy that can be transmitted from suppliers to load in any given moment. Supply and demand fundamentals dictate that less transfer capability (*i.e.,* less supply) will result in higher rates, all else being equal. Inaccurate transmission line ratings can result in underutilization (or overutilization) of existing transmission facilities, thereby sending a signal that there is less (or more) transfer capability than is truly available. This signal impacts the wholesale rates charged for providing energy and other ancillary services. For example, if the system operator believes there is less transfer capability than is truly available, it may dispatch more expensive generators to serve load, when less expensive generators (which would have resulted in lower congestion costs) could have been used to reliably serve the same load. Alternatively, inaccurate transmission line ratings can result in oversubscription of existing transmission facilities, thereby sending the opposite signal—that there is more transfer capability than is truly available—which may risk damage to equipment, may fail to accurately price congestion costs, and may fail to signal to the market that more generation and/or transmission investment may be needed in the long term. We therefore find that transmission line ratings

[28] Ohio FEA Comments at 6.

[29] Potomac Economics Comments at 5.

[30] SPP MMU Comments at 1–2.

[31] CAISO DMM Comments at 4.

[32] R Street Institute Comments at 2.

[33] Industrial Customer Organizations Comments at 11–12.

[34] TAPS Comments at 5–6.

[35] WATT Comments at 3–5.

[36] Certain TDUs Comments at 4.

[37] Clean Energy Parties Comments at 2–3; EDFR Comments at 3.

[38] Clean Energy Parties Comments at 2–3.

[39] NYTOs Comments at 9 (referencing *Cal. Indep. Sys. Operator Corp.* v. *FERC,* 372 F.3d 395, 402 (D.C. Cir. 2004)).

[40] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 77 FR 32184 (May 31, 2012), 136 FERC ¶ 61,051 (2011), *order on reh'g,* Order No. 1000–A, 139 FERC ¶ 61,132, *order on reh'g and clarification,* Order No. 1000–B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

[41] NYTOs Comments at 9–10.

[42] 16 U.S.C. 824(b)(1), 824d.

[43] 16 U.S.C. 824e.

directly affect wholesale rates and, concomitantly, that inaccurate transmission line ratings result in unjust and unreasonable wholesale rates.[44]

31. Most commenters, except NYTOs, agree with the Commission's preliminary conclusion that transmission line ratings directly affect wholesale rates.[45] NYTOs caution that the D.C. Circuit found there are limits to the Commission's FPA section 206 jurisdiction over ''practices'' and that the term may not include all utility operations.[46] But, the inextricable link between transmission line ratings and wholesale rates places transmission line ratings within the Commission's FPA section 206 jurisdiction.

32. Some commenters, in response to the preliminary finding that accurate transmission line ratings are necessary for just and reasonable wholesale rates, argue that transmission line ratings are fundamentally a reliability tool.[47] We agree that system safety and reliability are paramount to the proposed requirements for transmission line ratings. But we disagree with the suggestion that because transmission line ratings are critical to reliability, economic considerations are an inappropriate basis for requiring a certain type of transmission line ratings. Instead, we find that commenters present a false choice; economic considerations and reliability considerations are inextricably linked as reliability constraints bound the potential economic transactions of market participants. In the case of transmission line ratings, transmission owners calculate the maximum transfer capability of a transmission line. Transmission providers, in order to maintain reliable system operations, incorporate those ratings and other constraints into operations, and the results determine dispatch and commitment instructions and wholesale rates. Even though transmission line ratings can be seen as a reliability tool, that does not obviate the need to ensure that the wholesale rates resulting from such reliability tools are just and reasonable.

33. Regarding that incorporation of transmission line ratings into operations and resulting wholesale rates, as the Commission explained in the NOPR, most transmission owners implement seasonal or static line ratings. Such seasonal or static line ratings are based on conservative, worst-case assumptions about long-term conditions, such as the expected high temperatures that are likely to occur over the longer term. While such long-term assumptions may be appropriate in various planning contexts, they often do not reflect the true near-term transfer capability of transmission facilities and, when used in near-term operations, produce unjust and unreasonable wholesale rates.

34. As explained in the NOPR, incorporating near-term forecasts of ambient air temperatures in transmission line ratings can more accurately reflect the true near-term transfer capability of transmission facilities than continuing to rely on seasonal or static line ratings. Because actual ambient air temperatures are usually not as high as the ambient air temperatures conservatively assumed in seasonal and static line ratings, updating the transmission line ratings used in near-term transmission service to reflect actual ambient air temperatures usually results in increased system transfer capability. By increasing transfer capability, congestion costs will, on average, decline because transmission providers will be able to serve load with less expensive resources from what were previously constrained areas. For example, Potomac Economics has found that AAR implementation by those not already using AARs in MISO alone would have produced approximately $66.5 million and $49 million in reduced congestion costs in 2019 and in 2020, respectively.[48] Such congestion cost changes and related overall price changes will more accurately reflect the actual congestion on the system, leading to wholesale rates that more accurately reflect the cost of the wholesale service being provided. Likewise, the ability to increase transmission flows into load pockets may reduce transmission provider reliance on local reserves inside load pockets, which may reduce local reserve requirements and the costs to maintain that required level of reserves.

35. Moreover, while current transmission line rating practices usually understate transfer capability, they can also overstate transfer capability and, in doing so, place transmission lines at risk of inadvertent overload. While actual ambient air temperatures are usually not as high as the assumed seasonal or static line rating temperature input, in some instances actual ambient air temperatures exceed those assumed temperatures. In those instances, seasonal or static line ratings might reflect more transfer capability than physically exists, and therefore such transmission line ratings might allow access to some electric power supplies and/or demand that would not be available if transmission line ratings reflected the true transfer capability. Overstating transfer capability, like understating transfer capability, can result in wholesale rates that fail to reflect the cost of the wholesale service being provided, though, in the case of overstated transfer capability, through inaccurately low congestion pricing and failing to signal to the market that more generation and/or transmission investment may be needed in the long term.

36. Regarding DLRs, in addition to ambient air temperatures and the presence or absence of solar heating, other weather conditions such as (but not limited to) wind, cloud cover, solar heating intensity, and precipitation, and transmission line conditions such as tension and sag, can affect the amount of transfer capability of a given transmission facility. DLRs incorporate these additional inputs and thereby provide transmission line ratings that are closer to the true thermal transmission line limits than AARs. However, as noted above and explained in greater detail in Section IV.E below, based on the record in this proceeding, we decline to mandate DLR implementation in this final rule. We instead incorporate the record in this proceeding on DLRs into new Docket No. AD22–5–000, which we open to further explore DLR implementation.

37. While we believe additional record is needed regarding DLR implementation, we can determine based on the record that current transmission line rating practices in RTOs/ISOs that do not permit the acceptance of DLRs from transmission owners that use DLRs are contributing to unjust and unreasonable wholesale rates by acting as a barrier to accurate transmission line ratings. Therefore, as part of remedying inaccurate transmission line ratings that result in unjust and unreasonable wholesale rates, we require RTOs/ISOs to establish and maintain the systems and

[44] SPP MMU Comments at 1–2; Potomac Economics Comments at 5; CAISO DMM Comments at 4; Industrial Customer Organizations Comments at 11–12; TAPS Comments at 5–6; Certain TDU Comments at 4–5; Clean Energy Parties Comments at 2–3.

[45] AEP Comments at 3; Ohio FEA Comments at 6; New England State Agencies Comments at 8; OMS Comments at 6; Potomac Economics Comments at 5; CAISO DMM Comments at 4; SPP MMU Comments at 1–2; R Street Institute Comments at 2; Industrial Customer Organizations Comments at 11–12; TAPS Comments at 5–6; WATT Comments at 3–5; Certain TDU Comments at 4–5; Clean Energy Parties Comments at 2–3; EDFR Comments at 3.

[46] NYTOs Comments at 9–10.

[47] *See, e.g.,* Dominion Comments at 13; Exelon Comments at 6; PJM Indicated Transmission Owners Comments at 2; EEI Comments at 5.

[48] Potomac Economics Comments at 8.

procedures necessary to permit the acceptance of DLRs from transmission owners that use them. As the Commission explained in the NOPR, some RTOs/ISOs rely on software that cannot accommodate transmission line ratings that frequently change, such as DLRs.[49] Without reflecting such frequent changes to transmission line ratings, such software serves as a barrier that prevents transmission owners in RTOs/ISOs from implementing DLRs and better reflecting the actual transfer capability of the transmission system. The result is that, even if a transmission owner sought to implement DLRs, the RTO's/ISO's energy management system (EMS) may not be able to accept and use the resulting transmission line rating. The potential inability of RTOs/ISOs to accept and use a DLR prevents RTO/ISO markets from benefiting from the more accurate representation of current system conditions. Therefore, we require RTOs/ISOs to establish and maintain the systems and procedures necessary to permit the acceptance of DLRs from transmission owners that use them.

38. Regarding emergency ratings, we find that many transmission owners' current transmission line rating practices fail to use emergency ratings, and in failing to do so, lead to transmission line ratings that do not accurately reflect the near-term transfer capability of the transmission system, and therefore result in wholesale rates that do not reflect costs of the wholesale service being provided. As the Commission explained in the NOPR, transmission owners often develop two sets of transmission line ratings for most facilities: Normal ratings that can be safely used continuously, and emergency ratings that can be used for a specified shorter period of time, typically during post-contingency operations. Transmission providers generally calculate resource dispatch and commitments to ensure that all facilities are within applicable facility ratings both during normal operations and following any modeled contingency (*e.g.,* following the loss of a transmission line). In ensuring that the system is stable and reliable following a contingency, transmission providers often allow post-contingency flows on transmission lines to exceed normal ratings for short periods of time, as long as those flows do not exceed the applicable emergency rating for the corresponding timeframe. Because these emergency ratings are a more accurate representation of the flow limits over those shorter timeframes, their use in models of post-contingency flows produces wholesale rates that more accurately reflect the costs of the wholesale service being provided and therefore is necessary to ensure just and reasonable wholesale rates. For this reason, as described below, we require that transmission providers implement uniquely determined emergency ratings. Additionally, we require that transmission providers use uniquely determined emergency ratings for contingency analysis in the operations horizon and in post-contingency simulations of constraints. Such uniquely determined emergency ratings must also include separate AAR calculations for each emergency rating duration used.

39. Finally, we find that the current level of transparency into transmission line ratings and methodologies may result in unjust and unreasonable wholesale rates. In some regions, where the transmission owner and transmission provider are not the same entity, such as RTOs/ISOs, current transparency levels prevent the transmission provider and market monitor(s) from having the opportunity to assess the accuracy of transmission line ratings. For example, as the Commission described in the NOPR, without knowing the basis for a given transmission line rating that frequently binds and elevates prices, a transmission provider and/or market monitor cannot determine whether the transmission line rating is accurately calculated.[50] Moreover, we find that, absent additional information to market participants on transmission line ratings and their methodologies, the status quo does not provide market participants with information important to making cost-effective decisions and, thereby, impedes such decisions. For example, without accurate transmission line rating information, market participants operate without information that is important in making accurate economic decisions regarding where to build generation or where to site load. Further, this lack of transparency could allow transmission owners to submit inaccurate near-term transmission line ratings, which, in turn, would result in wholesale rates that do not accurately reflect the cost of the wholesale service being provided, as discussed above. For these reasons, we require: (1) Public utility transmission owners to share transmission line ratings and methodologies with their transmission provider(s) and with market monitors in RTOs/ISOs; (2) transmission providers to share their transmission owners' transmission line ratings and methodologies with any transmission provider(s) upon request; (3) transmission providers to maintain a database of their transmission owners' transmission line ratings and methodologies on the transmission provider's OASIS site or another password-protected website; and (4) transmission providers to post on OASIS or another password-protected website any uses of exceptions or temporary alternate ratings.

IV. Discussion

A. Transmission Line Ratings Definition

1. NOPR Proposal

40. In the NOPR, the Commission proposed to define a transmission line rating in *pro forma* OATT Attachment M as the maximum transfer capability of a transmission line, computed in accordance with a written transmission line rating methodology and consistent with good utility practice, considering the technical limitations on conductors and relevant transmission equipment (such as thermal flow limits), as well as technical limitations of the transmission system (such as system voltage and stability limits). Relevant transmission equipment may include, but is not limited to, circuit breakers, line traps, and transformers.[51]

41. Under the ''Obligations of Transmission Provider'' section in *pro forma* OATT Attachment M, the Commission further proposed to require that the transmission provider must use either AARs or seasonal line ratings, as appropriate, as the relevant transmission line ratings. Similarly, and as described in more detail in Section IV.D.3, the Commission proposed exceptions to the AAR and seasonal line rating requirements for certain transmission line ratings.

2. Comments

42. Some commenters support the proposed definition of transmission line rating, while others request clarity or modifications be made, specifically around the list of relevant transmission equipment. AEP supports the Commission's proposed transmission line rating definition, explaining that the Commission's proposed definition reflects the fact that transmission line ratings incorporate a set of electrical equipment that collectively operate as a single bulk electric system element (*e.g.,* transformers, relay protective devices, terminal equipment, and series and shunt compensation devices) and that the most limiting component from that

[49] NOPR, 173 FERC ¶ 61,165 at P 43.

[50] *Id.* P 47.

[51] NOPR, 173 FERC ¶ 61,165 at P 85.

set determines the transmission line rating.[52] Similarly, Indicated PJM Transmission Owners address the NOPR's proposed AAR requirements set forth in *pro forma* OATT Attachment M under ''Obligations of Transmission Provider'' (hereinafter referred to as ''the proposed AAR requirements'') as ambient-adjusted and seasonal line ratings, consistent with NERC's definition of facility rating,[53] and describe Indicated PJM Transmission Owners' implementation of AARs, consistent with NERC's definition of facility ratings.[54] PJM also describes the implementation of AARs for each of its transmission facilities.[55]

43. Entergy explains that overhead conductor ratings and ratings for ''ancillary equipment,'' or equipment that does not include a primary element, like conductors and transformers, can be temperature adjusted. According to Entergy, examples of ''ancillary equipment'' include breakers, switches, traps, busses, jumpers, current transformers, potential transformers, and relay equipment. Entergy further asserts, however, that shunt reactors, series capacitors, relays, current transformers, static VAR compensators, circuit breakers, autotransformers, copper weld (''CW'') buses, conductors, risers or jumpers, and, subject to limited exceptions, customer equipment have ratings that cannot be temperature adjusted.[56] Eversource states that the ratings for relays and other equipment, such as splices, switches, and terminal equipment, are not impacted by ambient air temperatures.[57] NYISO states that the majority of the bulk electric system equipment ratings in New York are able to be rated using AARs or DLRs,[58] while NYTOs note that transmission line ratings may be based on non-conductor components which are not affected by ambient air temperatures.[59] EEI and MISO Transmission Owners request clarity on the definition of transmission line rating and its specific applicability, stating that the AAR requirements should not apply to power transformers, but instead, under certain circumstances, to other types of transformers, including current transformers.[60] EEI further explains that ratings for power transformers are generally the result of the efficiency of the heat transfer process, not ambient air temperatures directly, and thus requests that the Commission clarify that the references to transformers apply only to transformers that limit or impact transmission line ratings and not power transformers generally.[61] Entergy similarly notes that transformer and relay ratings do not change with ambient conditions.[62] ITC states that AARs cannot be applied to voltage or stability limits and therefore recommends that ''transmission line rating'' reflect the concepts of equipment and facility rating as defined by NERC in order to avoid confusion with a system operating limit.[63] APS states that transmission lines with limitations associated with substation equipment or series capacitors, among other equipment in which the transmission line is not the limiting factor, may not experience changes to their transfer capabilities.[64] MISO contends that the list could include potential relay trip limits and maximum power transfer limits.[65]

3. Commission Determination

44. In this final rule, we adopt the definition of transmission line rating proposed in the NOPR. Specifically, we adopt the proposed definition that a transmission line rating means the maximum transfer capability of a transmission line, computed in accordance with a written transmission line rating methodology and consistent with good utility practice, considering the technical limitations on conductors and relevant transmission equipment (such as thermal flow limits), as well as technical limitations of the transmission system (such as system voltage and stability limits). Relevant transmission equipment may include, but is not limited to, circuit breakers, line traps, and transformers. As the Commission stated in the NOPR, system safety and reliability are paramount to the proposed requirements for transmission line ratings. We agree with AEP that the definition adopted herein reflects the fact that transmission line ratings must incorporate a set of electrical equipment ratings that collectively operate as a single bulk electric system element (*e.g.,* transformers, relay protective devices, terminal equipment, and series and shunt compensation devices) and that the most limiting component from that set determines the transmission line rating.[66]

45. In response to comments about the definition's inclusion of the technical limitations (such as thermal flow limits) on conductors and relevant transmission equipment, we clarify that the definition of transmission line rating encompasses transmission line ratings for electric system equipment that includes more than just overhead conductors. For example, it includes ratings for electric system equipment such as circuit breakers, line traps, and transformers. Additionally, as described in more detail below in Section IV.D.3, we adopt the list of proposed exceptions from the NOPR. Consequently, we do not require transmission line ratings that are not affected by ambient air temperatures to be rated using forecasts of ambient air temperatures. That said, we decline to define in this final rule which electric system equipment ratings are (or are not) affected by ambient air temperatures. Instead, we allow flexibility for individual transmission owners and transmission providers to apply good utility practice to determine which specific electric system equipment has ratings that are (or are not) affected by ambient air temperatures.

46. Finally, in response to requests for clarification from EEI and MISO Transmission Owners regarding the applicability of the proposed AAR requirements to power transformers, we decline to provide a generic exception from the AAR requirement for power transformers. The operating limits of a power transformer are bounded by the

[52] AEP Comments at 2–3.

[53] The NERC Glossary defines a ''Facility Rating'' as: ''[t]he maximum or minimum voltage, current, frequency, or real or reactive power flow through a facility that does not violate the applicable equipment rating of any equipment comprising the facility.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[54] Indicated PJM Transmission Owners Comments at 1–2, 6–7.

[55] PJM Comments at 2–3.

[56] Entergy Comments at 5–6.

[57] Eversource Comments at 3.

[58] NYISO Comments at 3–4.

[59] NYTOs Comments at 8.

[60] EEI Comments at 17–18; MISO Transmission Owners Comments at 39–40.

[61] EEI Comments at 17–18.

[62] Entergy Comments at 9–10.

[63] ITC Comments at 11–12. The NERC Glossary defines an ''Equipment Rating'' as: ''[t]he maximum and minimum voltage, current, frequency, real and reactive power flows on individual equipment under steady state, short-circuit and transient conditions, as permitted or assigned by the equipment owner.'' It defines a ''System Operating Limit'' as: ''[t]he value (such as MW, Mvar, amperes, frequency or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. System Operating Limits are based upon certain operating criteria. These include, but are not limited to: Facility Ratings (applicable pre- and post-Contingency Equipment Ratings or Facility Ratings); transient stability ratings (applicable pre- and post-Contingency stability limits); voltage stability ratings (applicable pre- and post-Contingency voltage stability); and system voltage limits (applicable pre- and post-Contingency voltage limits).'' NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[64] APS Comments at 3.

[65] MISO Comments at 34.

[66] AEP Comments at 2–3.

ambient air temperature, the average winding temperature, and the maximum winding hottest-spot temperature.[67] However, we reiterate the exceptions adopted herein and discussed further below, which provide that any rating not affected by ambient air temperatures would not be required to incorporate forecasts of ambient air temperatures into the rating. Thus, if a transmission provider determines, consistent with good utility practice, that a specific power transformer's rating is not affected by ambient air temperature, then that power transformer would fall within the scope of such exceptions to the AAR requirement.

B. Ambient-Adjusted Ratings

1. AAR Definition and Transmission Provider Obligations

a. NOPR Proposal

47. In the NOPR, the Commission proposed to define an AAR in *pro forma* OATT Attachment M and in the Commission's regulations as a transmission line rating that: (1) Applies to a time period of not greater than one hour; (2) reflects an up-to-date forecast of ambient air temperature across the time period to which the rating applies; and (3) is calculated at least each hour, if not more frequently. As obligations of the transmission provider set forth in *pro forma* OATT Attachment M, the Commission proposed to require that transmission providers use AARs as the applicable line rating: (1) For requests for near-term point-to-point transmission service ending within 10 days of the request date, as defined in *pro forma* OATT Attachment M; (2) for determining the necessity of near-term curtailment or interruption of near-term point-to-point transmission service anticipated to occur (start and end) within the next 10 days; and (3) for determining the necessity of near-term interruption or redispatch of network transmission service anticipated to occur (start and end) within the next 10 days. The Commission proposed to require transmission providers to implement the use of AARs and seasonal line ratings on all historically congested transmission lines[68] within one year after the compliance filing due date and on all other transmission lines within two years after the compliance filing due date.[69] For RTOs/ISOs, for which the Commission has approved variations from the *pro forma* OATT to manage congestion and initiate curtailments and/or redispatch of transmission service within their footprints (although generally not at their borders), the Commission proposed two requirements. First, the Commission proposed requirements for RTOs/ISOs to implement AARs in both the day-ahead and real-time markets and any intra-day reliability unit commitment. Second, the Commission proposed to require AARs as the relevant transmission line rating for any near-term point-to-point transmission service offered (*e.g.,* at the RTO's/ISO's borders).

48. As justification for the NOPR proposal to require AAR implementation on all transmission lines and not only on historically congested lines, the Commission noted that any facility can become the most limiting element as the transmission system changes, and in certain circumstances flows may change considerably from normal operations. Therefore, the Commission proposed to require AARs be implemented on all transmission lines but recognized that a staggered implementation schedule would allow transmission providers and transmission owners to focus initial implementation where it would have the most impact.[70]

49. As justification for requiring AARs, the Commission preliminarily found that AAR requirements strike an appropriate balance between benefits and challenges. First, the Commission observed that, while there are differences across transmission systems, simply accounting for ambient air temperatures in transmission line ratings can reliably increase power transfer capability and significantly lower production costs at a manageable implementation cost. The Commission next explained that, according to Potomac Economics' estimates, the benefits to AAR implementation by those not already implementing AARs in MISO alone would have produced approximately $94 million and $78 million in reduced congestion costs in 2017 and in 2018, respectively. The Commission further explained that, while several entities noted implementation costs as a barrier to AAR implementation, the costs identified were mostly initial investments in upgraded OASIS and/or EMS and ratings databases and that once these systems are upgraded, adding AARs to additional transmission lines appears to have a minimal incremental cost.[71]

b. Comments

50. In response to the proposed AAR requirements, RTO/ISO comments are mixed, with most requesting flexibility to accommodate regional or market differences,[72] while market monitors are generally supportive of the NOPR proposal.[73] Transmission owners are conceptually supportive of AAR implementation but request flexibility in response to what they generally describe as an overly broad requirement.[74] The PJM transmission owners that submitted comments are generally supportive of the proposed AAR requirements in *pro forma* OATT Attachment M, explaining that they have experience using AARs.[75] Other commenters, including state governments, generation, load, renewable energy advocates, and other technical experts, are generally supportive of the proposed AAR requirements.[76]

51. Several transmission owners explain that they currently use AARs on all or parts of their transmission lines and support the Commission's NOPR proposal to implement widespread AAR use. AEP notes that it has used AARs in real-time operations for decades and that AARs have provided both reliability and financial benefits.[77] AEP notes that the use of AARs is common in PJM and that it similarly implements AARs for its facilities in SPP and the Electric Reliability Council of Texas (ERCOT).[78] Exelon states that it

[67] Institute of Electrical and Electronics Engineers, IEEE Standard for General Requirements for Liquid-Immersed Distribution, Power, and Regulating Transformers, IEEE Std C57.91.00–2021.

[68] The Commission proposed to define a historically congested transmission line as ''a transmission line that was congested at any time in the five years prior to the effective date of [this final rule].'' NOPR, 173 FERC ¶ 61,165 at P 92.

[69] *Id.* P 131.

[70] *Id.* PP 93–94.

[71] *Id.* P 99.

[72] *See, e.g.,* MISO Comments at 7, 9, 14–16; NYISO Comments at 9–11; ISO–NE Comments at 9.

[73] Potomac Economics Comments at 3–4; CAISO DMM Comments at 2–4; SPP MMU Comments at 1, 4.

[74] MISO Transmission Owners Comments at 8–9; PacifiCorp Comments at 2; EEI Comments at 2–5; NRECA/LPPC Comments at 2–3; Entergy Comments at 1–2; BPA Comments at 2–4; WAPA Comments at 4–5; APS Comments at 2–4; Southern Company Comments at 2–3; NYTOs Comments at 2–3; Duke Energy Comments at 1–2; PG&E Comments at 3; SCE Comments at 1–2; SDG&E Comments at 1–2; LADWP Comments at 2–3; IID Comments at 4–6; ITC Comments at 1–3; Sunflower Comments at 2; Eversource Comments at 5–7.

[75] Exelon Comments at 1–2; AEP Comments at 5–6; Dominion Comments at 3–4; Indicated PJM Transmission Owner Comments at 1–4.

[76] New England State Agencies Comments at 10; OMS Comments at 2; Ohio FEA Comments at 2; R Street Institute Comments at 1–2; WATT Comments at 1–2; DC Energy Comments at 1–2; ACORE Comments at 1; Clean Energy Parties Comments at 2, 4–6; ENEL Comments at 1; EDFR Comments at 1–2; Vistra Comments at 1–2; EPSA Comments at 2; Industrial Customers Comments at 1–2; TAPS Comments at 1–2; Certain TDU Comments at 1.

[77] AEP Comments at 3.

[78] *Id.* at 3–4.

considers AARs to be a best practice, explaining that all of its six utilities have implemented AARs on their transmission systems, without any adverse reliability or safety impacts, and have found the practice to be a cost-effective tool to enhance grid reliability.[79] Dominion states that, because PJM has implemented AARs for transmission service and for use in its day-ahead and real-time markets, Dominion Energy Virginia has adopted and uses PJM's AAR methodology on all its transmission lines, while Dominion Energy South Carolina uses AARs on only a portion of its transmission system.[80] Indicated PJM Transmission Owners support efforts to enhance transmission utilization by requiring AAR and seasonal line rating implementation, explaining that such practices improve efficiency; they also state that transmission line ratings are fundamentally a reliability tool.[81] While generally supportive of the NOPR proposal, Dominion, AEP, and Indicated PJM Transmission Owners all request flexibility to accommodate PJM's current AAR implementation and ask that the Commission not require hourly updates to AARs.[82]

52. Both ITC and Sunflower state that they are generally supportive of AAR implementation, but urge flexibility for transmission providers to implement AARs.[83] MISO Transmission Owners, explaining that they have initiated a process to implement AARs, state that they support certain aspects of the NOPR, but also state that other aspects are overly broad and will not yield sufficient benefits to justify the costs.[84] MISO Transmission Owners urge the Commission to allow for regional flexibility in any requirements and state that AAR deployment should focus on where it is expected to provide benefits by ''freeing up'' additional transfer capability.[85] MISO Transmission Owners state that, over the past five years, congestion arose on only 10% of the nearly 10,000 transmission facilities under MISO's functional control and that there would be no benefit to implementing AARs on non-congested lines.[86] MISO Transmission Owners also state that there are several necessary steps to implement AARs, which can be costly and time consuming.[87] Additionally, MISO Transmission Owners state that the Commission should not rely upon Potomac Economics' estimates of AAR benefits, explaining that Potomac Economics inaccurately assumed that: (1) All transmission lines are ambient adjustable; (2) all transmission owners are using worst-case assumptions; and (3) congestion caused by transient outages existed even though it has since been alleviated by recent upgrades.[88]

53. NYTOs, Eversource, and Southern Company request that the Commission refrain from adopting blanket AAR requirements for all transmission lines and instead require transmission providers to adopt a process for determining whether to apply AARs or DLRs to certain transmission facilities.[89] Southern Company suggests that such a process could be similar to the Commission's available transfer capability (ATC) requirements, whereby a public utility could include the metrics and criteria for determining when to use AAR or DLR in its OATT and implementation details in its guidelines or business practices.[90] Southern Company states that, while broader use of AARs and DLRs may provide cost savings to customers, the Commission's proposed approach in the NOPR is overly prescriptive and may therefore create unnecessary implementation complications and limit the deployment of other grid-enhancing technologies.[91] Southern Company and NRECA/LPPC also argue that non-RTO/ISO regions are characterized by long-term transmission commitments and that incremental short-term transfer capability is less relevant and less likely to result in cost savings.[92] Eversource contends that it applies AARs where it is beneficial, but states that the benefits of AARs will depend on specific circumstances within a region, noting that there is little congestion in ISO–NE.[93]

54. Southern Company states that reliability issues may arise as a result of the NOPR proposal because AARs may create difficulties in identifying the most limiting element, which may change as the temperature changes, and similar difficulties may arise in complying with Reliability Standard PRC–023–4's transmission relay loadability requirements that depend on maximum published ratings.[94] EEI states that, to ensure compliance with Reliability Standard PRC–023–4, significant amounts of field engineering time could be required to install and test new settings for thousands of relays.[95] NYTOs state that implementing the AAR requirements will require significant time and resources and would divert scarce resources from ongoing efforts to meet the goals of New York's Climate Leadership and Community Protection Act.[96] NERC contends that the Commission should keep in mind considerations for implementing AARs across long transmission lines that span multiple climates.[97]

55. Duke Energy states that it already employs AARs in real-time operations and supports the Commission's proposed requirements for transmission providers to implement AARs in real-time operations.[98] However, Duke Energy also argues that, because incorporating AARs into ATC calculations would require fundamental software changes that may take several million dollars and multiple years to complete, the benefits may not outweigh the costs.[99] Duke Energy suggests that the Commission should instead require transmission providers to submit a compliance filing in which they may propose a process to identify the transmission facilities for which the implementation of AARs and seasonal line ratings will provide the most benefits to customers.[100]

56. EEI states that its experience with AARs is that their use can provide benefits on a subset of transmission lines [101] and requests flexibility for transmission owners and transmission providers to implement transmission line rating solutions that best suit their needs.[102] EEI recommends a staggered AAR approach whereby AARs would first be implemented on priority designated facilities, using established and studied criteria, and any subsequent AAR implementation would occur following further studies of potential benefits.[103] Similarly, Entergy states that AARs allow for more flexibility in real-time operations than static/thermal values for real-time contingency studies,

[79] Exelon Comments at 1–2.

[80] Dominion Comments at 6.

[81] Indicated PJM Transmission Owners Comments at 1–2.

[82] Dominion Comments at 3; AEP Comments at 6–7; Indicated PJM Transmission Owners Comments at 5.

[83] ITC Comments at 1–3; Sunflower Comments at 2.

[84] MISO Transmission Owners Comments at 3–4.

[85] *Id.* at 13.

[86] *Id.* at 28.

[87] *Id.* at 22.

[88] *Id.* at 43–45.

[89] Southern Company Comments at 1–2; Eversource Comments at 6; NYTOs Comments at 10.

[90] Southern Company Comments at 1–2.

[91] *Id.* at 2.

[92] *Id.* at 4–5; NRECA/LPPC Comments at 19.

[93] Eversource Comments at 4–5.

[94] Southern Company Comments at 6.

[95] EEI Comments at 5–6.

[96] NYTOs Comments at 6–7.

[97] NERC Comments at 7.

[98] Duke Energy Comments at 5.

[99] *Id.* at 10.

[100] *Id.* at 5.

[101] EEI Comments at 5.

[102] *Id.* at 2–4.

[103] *Id.*

but contends that the use of AARs should follow a scientific application of factors that can reasonably result in an adjustment of facility ratings to those facilities for which an adjustment would be reasonably expected to provide benefits that exceed costs.[104]

57. NRECA/LPPC, Sunflower, and WAPA contend that the promised benefits, costs, and risks of AARs are not evenly distributed nationwide and that blanket application of the proposed AAR requirements poses difficult operating challenges.[105] NRECA/LPPC argue that the Commission should maintain a focus on safety and reliability and limit the scope of any final rule by applying the AAR requirements to transmission lines: (1) Rated 100 kV and above; (2) that are historically congested due to conductor limitations only; and (3) that are under RTO/ISO control. In addition, NRECA/LPPC argue that AAR requirements should be limited to transmission service used for near-term wholesale transactions, which in the RTOs/ISOs would be the day-head and real-time markets, and outside of the RTOs/ISOs, if applied, would be daily and hourly ATC, curtailment, and redispatch.[106] NRECA/LPPC and Sunflower further contend that, due to challenges in implementing AARs, utilities should have the flexibility to choose the AAR methodology best suited to their needs and should provide a waiver mechanism for particular circuits on which AAR implementation is difficult.[107]

58. Several Western Interconnection, non-CAISO transmission owners, including PacifiCorp, BPA, WAPA, and APS, broadly support the adoption of AARs due to the associated reduction in congestion, increase in transfer capability, and reliability improvements. However, these transmission owners request additional flexibility in how transmission owners apply AARs and urge the Commission to not adopt blanket AAR requirements for all transmission lines given differences in terrain, line lengths, and scarcity of temperature data for such lines.[108] In explaining the drawbacks to blanket AAR implementation, APS explains that non-congested transmission lines, transmission lines that are substation equipment-limited, and transmission lines that are voltage- and stability-limited will not benefit from AAR implementation.[109] WAPA further identifies additional AAR implementation challenges, including the installation of new devices, communication equipment, and cybersecurity challenges. To reduce implementation burdens, WAPA recommends that the Commission examine real-time Total Transfer Capability (TTC) calculations.[110] WAPA further cautions that it would have to pass the costs of AAR implementation on to all customers, even though only some customers would benefit.[111] BPA states that if it uses AARs as proposed, it would need to make its wind assumptions more conservative, de-rating transmission, to mitigate the risk of operating near the conductor limit.[112]

59. PacifiCorp, BPA, EEI, and IID further explain additional difficulties they would face implementing the proposed requirements to incorporate AARs into ATC that could render AAR implementation infeasible.[113] IID explains that, in the Western Interconnection, path limits are the result of multiple limits in series and in parallel. TTC calculations involve adjusting a base case with an associated series of activities, and failures in base case studies have to be evaluated manually, such that a generic equation would be insufficient in calculating transmission line ratings.[114] BPA and PacifiCorp explain that most congested parts on their transmission systems are lines that are operated in parallel as part of a rated transmission path,[115] that such rated paths have interactions with other paths, which result in operating nomograms,[116] and that the NOPR proposal may be more appropriate for a flow-based transmission system.[117] According to PacifiCorp and BPA, it may be infeasible to implement AARs as it would substantially increase the time to compute the constraints that they use to calculate TTC.[118] CAISO also describes the TTC calculation process using rated paths and states that using hourly AARs would exponentially increase the complexity of such calculations and would necessitate further automation.[119] Similarly describing the challenges of incorporating AARs into ATC, EEI explains that, in some areas, TTC values are determined annually, or even less frequently.[120]

60. California transmission owners urge more targeted AAR implementation.[121] PG&E recommends requiring transmission owners to determine which lines would realize net benefits for customers if AARs were deployed, noting that deployment of AARs across all transmission lines could result in a negative return on investment and an increased risk profile for the transmission system.[122] PG&E notes that most of its weather stations are currently located in ''High Fire Threat Districts'' and contends that AAR implementation on 500 kV lines will require planning for additional weather station equipment to ensure that accurate weather data is available.[123] SCE advocates for phased AAR implementation in which transmission owners identify priority facilities, and, after implementation, study their implementation in a report filed with the Commission.[124] SDG&E contends that settings for all relays will have to be studied and installed in the field, causing a significant cost burden unaccounted for in the Commission's analysis.[125] IID contends that the Commission should not take a one-size-fits-all approach and, in addition to the challenges of AAR implementation, encourages the Commission to consider the costs of software, equipment, and staffing in comparison to the benefits of AARs providing congestion relief.[126]

61. LADWP states that Southern California loads peak in the summer when temperatures are already high and may not allow AARs to expand transfer capability. Conversely, according to LADWP, there is already abundant transfer capability in the winter months.[127] Describing AAR implementation challenges, LADWP notes that, due to the diversity in terrain and microclimates that western transmission lines traverse, weather forecasts can vary significantly during volatile weather seasons and present

[104] Entergy Comments at 8.

[105] NRECA/LPPC Comments at 15–16, 19; Sunflower Comments at 5; WAPA Comments at 5.

[106] NRECA/LPPC Comments at 2–3.

[107] *Id.* at 3; Sunflower Comments at 5.

[108] PacifiCorp Comments at 2; BPA Comments at 2–4; WAPA Comments at 4–5; APS Comments at 2–4.

[109] APS Comments at 2–4.

[110] WAPA Comments at 7–9.

[111] *Id.* at 4–5.

[112] BPA Comments at 4–5.

[113] *Id.* at 3–4; PacifiCorp Comments at 2; IID Comments at 5–6; EEI Comments at 10–11.

[114] IID Comments at 5.

[115] BPA Comments at 3; PacifiCorp Comments at 2.

[116] Nomograms are operating constraints related to the flow on multiple paths that generally result from the simultaneous interaction between those paths.

[117] BPA Comments at 3; PacifiCorp Comments at 2.

[118] BPA Comments at 3; PacifiCorp Comments at 2.

[119] CAISO Comments at 10.

[120] EEI Comments at 11.

[121] PG&E Comments at 3; SCE Comments at 1–2; SDG&E Comments at 1–2; LADWP Comments at 2–3.

[122] PG&E Comments at 3.

[123] *Id.* at 9–10.

[124] SCE Comments at 3–4.

[125] SDG&E Comments at 4.

[126] IID Comments at 5.

[127] LADWP Comments at 3–4.

challenges in identifying the most constraining ambient conditions for a given transmission line.[128] LADWP therefore contends that the Commission should consider offering regional exceptions from the AAR requirements or prescribing AARs only in areas where significant benefits are expected.[129]

62. PJM generally supports the adoption of AARs by transmission providers. PJM states that it already employs AARs in its operations and day-ahead and real-time markets and that the use of AARs is commonplace among the overwhelming majority of transmission owners in the PJM region. PJM states that transmission owners' utilization of AARs increases operational flexibility, promotes a more efficient use of the transmission system, and results in more reliable system dispatch and cost-effective market operations.[130]

63. CAISO states that it currently uses seasonal line ratings, emergency ratings, and AARs. However, CAISO notes that AARs are used on relatively few facilities and involve a manual process to update transmission line ratings for an applicable period. CAISO states that, while AARs provide a more accurate understanding of the transfer capability of the transmission system, CAISO recommends that the Commission allow transmission owners and transmission providers to justify when they use AARs.[131]

64. MISO states that AAR and DLR deployment can support the efficient use of existing transmission infrastructure but is not a long-term solution to meet emerging system needs. MISO states that the Commission should not mandate the use of AARs where the burden of that deployment is greater than the benefits to be expected. MISO contends that the Commission should explore options for a more targeted application of identifying facilities that are good candidates for AARs based on objective criteria and documented methodologies.[132] MISO notes that it and MISO Transmission Owners have already commenced an effort to identify a prioritized list of candidate transmission facilities for deployment of real-time AARs in MISO.[133]

65. NYISO does not support a uniform approach to managing transmission line ratings and instead requests that each RTO/ISO work with the Commission to set objectives for its markets.[134] NYISO contends that AAR use would not provide benefits everywhere.[135] NYISO explains that using AARs to modify day-ahead transmission line ratings would overly complicate the day-ahead market solution and would reduce efficiency.[136] NYISO requests flexibility for regional variation with transmission line ratings given regional differences, such as transmission scheduling and market rules.[137] NYISO states that it could work with stakeholders to develop a proposal to implement three to four sets of seasonal line ratings that would be easier to implement and still achieve many of the NOPR objectives.[138]

66. Neither ISO–NE nor SPP explicitly takes a position on the NOPR proposal to implement AARs. However, ISO–NE states that most of the congestion that occurs on its system is due to voltage or stability limitations, and thus AAR benefits may be limited.[139] ISO–NE estimates that the implementation of AARs could result in the lowering of thermal congestion costs by, at most, approximately $5–10 million per year.[140] ISO–NE also contends, however, that AAR implementation may expose other binding system limitations without appreciably increasing transfer capability or reducing congestion.[141]

67. Market monitors are mostly supportive of the proposed AAR requirements.[142] The SPP MMU supports the proposed reforms to improve the accuracy and transparency of transmission line ratings used by transmission providers. The SPP MMU notes that numerous SPP transmission lines are not rated according to SPP Planning Criteria.[143] The SPP MMU states that it supports the use of DLRs for all transmission lines.[144] According to the SPP MMU, when transmission line ratings underestimate the actual transfer capability of the transmission system, this can result in restricted flows on certain paths while overloading others and can create a potential for de facto physical withholding of the available transfer capability by transmission owners.[145] The SPP MMU argues that more accurate transmission line ratings will improve the robustness of price formation, particularly in congested areas.[146]

68. Potomac Economics states that only 8% of the transmission line ratings in MISO are adjusted for changes in ambient air temperatures. Potomac Economics indicates that it conservatively estimates that the benefits of using AARs and emergency ratings in 2019 and 2020 would have been between 9% and 13% of the real-time congestion value, or $98 million and $114 million per year.[147] Potomac Economics notes that transmission owners have little or no economic incentive to provide temperature-adjusted ratings and that transmission operators [148] rarely verify or validate transmission line rating methodologies or transmission line rating calculations.[149] Potomac Economics contends that it would be unreasonable to require AARs on all transmission facilities, and instead argues that it would be more reasonable to require that processes be established to allow for additional AARs to be deployed quickly when new constraints begin to bind or other studies indicate it may be appropriate.[150] Potomac Economics cautions, however, against requiring any cost-benefit analysis, noting that the incremental cost of initiating AARs on new constraints is near zero so such analysis is unnecessary.[151] Finally, Potomac Economics contends that using AARs and emergency ratings will not create reliability concerns as the NOPR proposal only requires that decisions to not implement AARs or emergency ratings be based on reliability and not a preference or policy decision.[152] CAISO DMM supports the proposed requirements to implement hourly AARs as a way to improve both the accuracy of congestion costs and transmission system efficiency.[153]

[128] *Id.* at 5–6.

[129] *Id.* at 4–5.

[130] PJM Comments at 2.

[131] CAISO Comments at 2.

[132] MISO Comments at 9.

[133] MISO Comments at 14.

[134] NYISO Comments at 1.

[135] *Id.* at 2.

[136] *Id.* at 1–2.

[137] *Id.* at 2.

[138] *Id.* at 20.

[139] ISO–NE Comments at 4–6.

[140] *Id.* at 5 (basing estimates on 2019 data contained in IMM and EMM Reports and the Commission's estimates of potential savings from AARs in other RTO/ISO regions).

[141] *Id.* at 6.

[142] Potomac Economics Comments at 3–4; CAISO DMM Comments at 2–4; SPP MMU Comments at 1, 4.

[143] SPP MMU Comments at 4.

[144] *Id.* at 1, 4.

[145] *Id.* at 7.

[146] *Id.* at 9.

[147] Potomac Economics Comments at 7–9; *see also* Potomac Economics Reply Comments at 2–6.

[148] The NERC Glossary defines a ''Transmission Operator'' as: ''[t]he entity responsible for the reliability of its 'local' transmission system, and that operates or directs the operations of the transmission Facilities.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[149] Potomac Economics Comments at 9–10; *see also* Potomac Economics Reply Comments at 6–7.

[150] Potomac Economics Comments at 20; *see also* Potomac Economics Reply Comments at 9.

[151] Potomac Economics Reply Comments at 7.

[152] *Id.* at 11.

[153] CAISO DMM Comments at 2, 4.

69. State government agencies are also mostly supportive of the proposed AAR requirements.[154] New England State Agencies state that they strongly support the Commission's proposed AAR requirements.[155] New England State Agencies state that the transmission system was built on behalf of and paid for by ratepayers, and argue that the Commission should take all reasonable steps to protect those ratepayers from excessive costs. New England State Agencies contend that the use of AARs can be an important tool in this regard.[156] New England State Agencies state that a transmission system operated using AARs may provide benefits by possibly: (1) Obviating the need for new transmission lines, thus deferring capital costs; [157] (2) reducing reliance on higher cost local reserves which will reduce costs and local reserve requirements resulting from an increased ability to flow power into load pockets; [158] and (3) helping with the integration of new clean energy resources.[159] Finally, New England State Agencies argue that, because parts of MISO as well as most of ERCOT are already employing AARs, there can be no serious argument that AARs are too difficult or costly to implement as was suggested by some transmission owners.[160]

70. OMS states that it supports the NOPR proposal that AAR requirements generally apply to all transmission lines and not just those with historical congestion.[161] OMS notes that the most expensive energy prices typically occur after unforeseen outages or weather events and are not the result of chronic, well understood scenarios. However, OMS also states that it does not support requiring AARs on those facilities where it is uneconomical or unreliable to do so.[162] OMS contends that the Commission should require RTOs/ISOs to develop a process whereby transmission owners transparently work with the RTOs/ISOs and market monitors to demonstrate why any exceptions from the requirements are justified.[163]

71. Ohio FEA also supports the AAR NOPR proposal, stating that AARs help ratepayers to realize the full benefits of their transmission system investment. Ohio FEA explains that the four Ohio transmission owners have already recognized the benefits of AARs, as a way of moving away from static ratings.[164] However, UDPU contends that the AAR NOPR proposal should be limited to certain historically congested facilities until the Commission has better information to assess the costs and benefits of broad AAR implementation.[165]

72. CEA encourages the Commission to further consider the costs associated with the proposed changes, as a broader use of AARs may over-estimate the benefit to cost ratio. CEA contends that the use of AARs presents a significant cost challenge considering the number of upgrades required.[166]

73. Other technical experts are also supportive of more accurate transmission line ratings.[167] R Street Institute states that understated transmission line ratings can result in increased congestion costs and underutilization of generation in export-constrained locales, which is disproportionately zero-emission generation.[168] R Street Institute contends that the Commission should require DLRs by default and permit exceptions where justified by a cost-benefit analysis.[169]

74. WATT supports the direction the Commission is taking with the NOPR's AAR requirements, but explains that additional factors that affect transmission line ratings but are not incorporated into AARs are very knowable.[170] WATT contends that the Commission should require the use of DLRs when certain criteria are met.[171] LineVision supports WATT's comments and states that DLR implementation will also result in additional accuracy and situational awareness.[172]

75. Renewable energy advocates are also generally supportive of the AAR NOPR proposal, but urge the Commission to take further measures to spur the implementation of DLRs.[173] For example, ACORE commends the Commission for issuing the NOPR, but recommends the Commission take further steps to encourage DLR deployment by incenting its deployment through transmission incentives and incorporating its assessment into transmission planning processes.[174] Similarly, Clean Energy Parties contend that AARs are easy to implement and a modest improvement over static line ratings.[175] However, Clean Energy Parties argue that DLR is superior to AAR, though Clean Energy Parties do not contend a blanket DLR mandate is appropriate.[176] ACPA/SEIA support accurate transmission line ratings, and contend that the Commission should require *all* transmission owners and transmission providers to study the costs and benefits of implementing DLRs on persistently congested transmission lines and require implementation where warranted.[177] ACPA/SEIA and Clean Energy Parties both argue that the Commission should alter its NOPR proposal to prioritize transmission lines that are expected to be congested, persistently congested, or likely to be congested in the future.[178]

76. Generator owners and representatives are also generally supportive of the proposed AAR requirements.[179] EDFR argues that getting the transmission line rating policy right is important due to the urgency of addressing the climate crisis and President Biden's carbon emissions reduction goals. EDFR contends that a lack of adequate transfer capability can cripple clean energy generation.[180] EDFR further explains that, under many offtake agreements in RTO/ISO markets, the developer is paid a fixed price for energy at a market hub and if congestion limits the project's ability to deliver power to the hub, then the developer bears the risk (known as basis risk). EDFR argues that congestion is difficult to hedge in an effective way because system topology and conditions change unexpectedly over time, but states that more accurate transmission line ratings will decrease basis risk and hedging difficulties.[181] EDFR contends that prioritization should not only consider historical congestion, but should consider future congestion based on transmission planning, interconnection, and transmission service studies for purposes of prioritizing implementation.[182]

[154] New England State Agencies Comments at 10; OMS Comments at 2; Ohio FEA Comments at 2.

[155] New England State Agencies Comments at 10.

[156] *Id.*

[157] *Id.* at 10–11.

[158] *Id.* at 12.

[159] *Id.*

[160] *Id.*

[161] OMS Comments at 8–10; *see also* OMS Reply Comments at 7, 10.

[162] OMS Comments at 9.

[163] *Id.*

[164] Ohio FEA Comments at 2–4.

[165] UDPU Comments at 1–3.

[166] CEA Comments at 2.

[167] R Street Institute Comments at 1; WATT Comments at 1–2; LineVision Comments at 1–2.

[168] R Street Institute Comments at 1.

[169] *Id.* at 3, 5–7.

[170] WATT Comments at 1–2.

[171] *Id.* at 10–12.

[172] LineVision Comments at 1–2.

[173] ACORE Comments at 1; Clean Energy Parties Comments at 2, 4–6.

[174] ACORE Comments at 1.

[175] Clean Energy Parties Comments at 4–5.

[176] *Id.* at 5, 8.

[177] ACPA/SEIA Comments at 5–7.

[178] *Id.* at 8–9; Clean Energy Parties Comments at 8, 10.

[179] ENEL Comments at 1; EDFR Comments at 1–2; Vistra Comments at 1–2; EPSA Comments at 2.

[180] EDFR Comments at 2.

[181] *Id.*

[182] *Id.* at 4.

77. EPSA contends that the Commission should encourage the use of technological advances that improve transmission operators' ability to track and optimize transmission line ratings and usage where feasible and cost effective. EPSA states that PJM's adoption of AAR requirements has shown clear benefits.[183] Vistra is supportive of the Commission's NOPR proposal, stating that it is imperative that the Commission act now to make best use of existing infrastructure and that AARs and DLRs are the best way to do that.[184]

78. Industrial Customer Organizations, TAPS, and Certain TDUs are also broadly supportive of the AAR NOPR proposal.[185] Certain TDUs state that they support the proposed rule and encourage the Commission to mandate improvements to the accuracy and transparency of transmission line ratings because not all transmission owners have shown a willingness to make these improvements voluntarily.[186] Certain TDUs state that they support the use of AARs as a way to better utilize the existing transmission system, noting that it will become imperative that the existing transmission system is utilized to the greatest extent possible as additional renewable resources come online.[187]

79. Industrial Customer Organizations state that they generally support the proposed rules, but assert that these rules should be implemented as soon as practicable.[188] Industrial Customer Organizations argue that, if prioritization is needed, congested circuits should be prioritized.[189] Industrial Customer Organizations explain that understated transmission line ratings increase congestion and may lead to curtailments. Industrial Customer Organizations contend that transmission owners that understate transmission line ratings may create an illusory need for transmission upgrades. Further, Industrial Customer Organizations contend that some transmission line ratings may be deliberately understated because transmission owners may have a profit incentive to calculate understated transmission line ratings in order to benefit local generation.[190]

80. TAPS states that it supports the proposed broad application of AARs because it reduces the likelihood that AARs will be implemented in a discriminatory manner.[191] Similarly, Clean Energy Parties cite Order No. 888,[192] in which the Commission stated that ''[d]enials of access [to transmission services] (whether they are blatant or subtle), and the potential for future denials of access [to transmission services], require the Commission to revisit and reform its regulation of transmission in interstate commerce.'' [193] According to Clean Energy Parties, Order No. 888 supports the assertion that a lack of consistency and transparency in transmission line ratings creates the potential for future denials of access to transmission service, as inaccurate transmission line ratings are used to provide discriminatory transmission service to preferential customers.[194]

81. Additionally, TAPS notes that the NOPR proposal would require the use of AARs when evaluating requests for near-term point-to-point transmission service and contends that the Commission should also apply the requirements to requests for near-term secondary service requests and near-term network resource designations. TAPS explains that secondary service comes ahead of non-firm point-to-point transmission service in curtailment priority, and the NOPR proposal flips this priority.[195]

82. Prysmian discourages mandatory AAR implementation without consideration of other variables and without a holistic evaluation of all transmission line rating inputs to determine whether an overall transmission line rating methodology is conservative or not. Prysmian states that AARs can also lead to situations in which near-term transfer capability is overstated.[196]

c. Commission Determination

83. In this final rule, we adopt with certain modifications the NOPR proposal to require transmission providers to apply the AAR requirements set forth in *pro forma* OATT Attachment M to all transmission lines, subject to the exceptions described below in Section IV.D.3.[197] As discussed above, the AAR requirements will ensure that transmission line ratings are more accurate. In turn, more accurate transmission line ratings will ensure wholesale rates more accurately reflect the cost of the wholesale service being provided (*i.e.,* energy, capacity, ancillary services, or transmission service) and, thus, that those wholesale rates are just and reasonable. We further describe, below, the requirements and the modifications to the NOPR proposal adopted herein.

84. First, we adopt the proposal to apply the AAR requirements as set forth under ''Obligations of Transmission Provider'' in *pro forma* OATT Attachment M to all transmission lines subject to the exceptions described below in Section IV.D.3. We find that applying the AAR requirements to all transmission lines will both ensure that wholesale rates remain just and reasonable and strike an appropriate balance between benefits and challenges of AAR implementation. For this reason, we do not adopt the phased-in implementation schedule proposed in the NOPR in which a transmission provider would initially implement AARs on only historically congested lines.

85. As the Commission preliminarily found in the NOPR [198] and as the record demonstrates, despite differences across transmission systems, simply accounting for ambient air temperatures in transmission line ratings can reliably increase power transfer capability, resulting in significant reliability, operational, and economic benefits. Numerous commenters describe these benefits.[199] For example, Potomac Economics estimates that the benefits to AAR implementation in MISO alone would have produced approximately $67 million and $49 million in reduced congestion costs in 2019 and in 2020,

[183] EPSA Comments at 2.

[184] Vistra Comments at 1–2.

[185] Industrial Customer Organizations Comments at 1–2; TAPS Comments at 1–2; Certain TDU Comments at 1.

[186] Certain TDUs Comments at 4.

[187] *Id.* at 4–5.

[188] Industrial Customer Organizations Comments at 15–18.

[189] *Id.* at 18–19.

[190] *Id.* at 4.

[191] TAPS Comments at 7.

[192] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[193] *Id.* at 31,652.

[194] Clean Energy Parties Comments at 2–3.

[195] TAPS Comments at 20.

[196] Prysmian Comments at 1.

[197] NOPR, 173 FERC ¶ 61,165 at PP 92, 102.

[198] *Id.* P 99.

[199] MISO Transmission Owners Comments at 8–9; PacifiCorp Comments at 2; EEI Comments at 4–5; Entergy Comments at 1–2; BPA Comments at 2–4; NYTOs Comments at 2–3, 5; Duke Energy Comments at 6–7; PG&E Comments at 1; LADWP Comments at 2–3; ITC Comments at 1–3; Sunflower Comments at 2; Exelon Comments at 1–2; AEP Comments at 3; Indicated PJM Transmission Owner Comments at 2; PJM Comments at 2; PJM Comments at 2; New England State Agencies Comments at 7; TAPS Comments at 5.

respectively.[200] Exelon describes AARs as a best practice that cost-effectively enhances transmission utilization, benefiting customers, without adverse safety and reliability impacts.[201] EEI acknowledges that experience with AARs shows that their use can provide benefits on certain subsets of transmission facilities.[202] PJM states that, in its experience, AARs increase operational flexibility, promote a more efficient use of the transmission system, and result in more reliable system dispatch and cost-effective market operations.[203] New England State Agencies argue that the Commission should take all reasonable steps to protect ratepayers from excessive costs and that the use of AARs, by permitting more power to flow than a system operated using static or seasonal line ratings, can be an important tool in this regard.[204] Similarly, TAPS explains that reliance on static and seasonal line ratings inflicts unnecessary costs on consumers and contends that deployment of AARs using commercial temperature forecasts can produce significant benefits to consumers at low cost.[205] While several entities note implementation costs as a barrier, these costs are mostly initial investment costs in EMS improvements to accommodate AARs, implementation of a ratings database, and review (and potentially reset) of protective relays settings.[206] Once these initial investments are made, adding AARs to additional transmission lines appears to have a minimal incremental cost.[207]

86. Second, in this final rule we adopt a requirement for transmission providers to use AARs when evaluating the availability of and requests for near-term transmission service (under sections 15, 17, 18, and 29 of the *pro forma* OATT).[208] For purposes of this requirement, we define ''requests for near-term transmission service'' to include not only requests for near-term point-to-point transmission service, but also network resource designations and secondary service where the start and end date of the designation/request is within the next 10 days. Specifically, we require transmission providers to use AARs as the relevant transmission line ratings when: (1) Evaluating requests for near-term transmission service, defined as transmission service ending within 10 days of the date of the request; (2) responding to requests for information on the availability of potential near-term transmission service (including requests for ATC or other information related to potential service); and (3) posting ATC or other information related to near-term transmission service to their OASIS site. As discussed further below, in response to comments, we modify this requirement from the NOPR proposal to include near-term network and near-term secondary service, as well as the near-term point-to-point transmission service proposed in the NOPR.[209]

87. Third, we adopt the Commission's proposal in the NOPR to require that transmission providers use AARs as the relevant transmission line rating when determining whether to curtail or interrupt near-term point-to-point transmission service (under sections 13.6 and/or 14.7 of the *pro forma* OATT) [210] if such curtailment or interruption is both necessary because of issues related to flow limits on transmission lines and anticipated to occur (start and end) within the next 10 days.[211]

88. Fourth, we adopt the proposal in the NOPR [212] to require that transmission providers use AARs as the relevant transmission line ratings when determining whether to curtail network or secondary service (under section 33 of the *pro forma* OATT) or redispatch network or secondary service (under sections 30.5 and/or 33 of the *pro forma* OATT), if such curtailment or redispatch is both necessary because of issues related to flow limits on transmission lines and anticipated to occur (start and end) within 10 days of such determination.

89. Fifth, we adopt and modify the proposal in the NOPR to allow RTOs/ISOs to comply with the final rule's AAR requirements by revising their OATTs to require implementation of AARs within their security constrained economic dispatch (SCED) and security constrained unit commitment (SCUC) models (and in any relevant related models) in both the day-ahead and real-time markets and reliability unit commitment (RUC) processes,[213] and any other intra-day RUC processes.[214] As the Commission recognized in the NOPR, such entities have Commission-approved variations from the *pro forma* OATT to manage congestion and initiate curtailments and/or redispatch of transmission service within their footprints (although generally not at their borders) through mechanisms such as SCED and SCUC. As discussed in Section IV.B.3.b, we adopt the Commission's NOPR proposal to require that transmission providers—including RTOs/ISOs—update their AARs at least hourly. As discussed in Sections IV.B.3.b and IV.B.3.c, for any seams-based transmission service offered by RTOs/ISOs, we adopt the Commission's NOPR proposal to implement the near-term transmission service requirements for inclusion of up-to-date hourly AAR calculations in ATC.

90. We do not adopt the NOPR proposal to establish a definition of historically congested transmission lines. Accordingly, since we are not adopting the NOPR's proposed definition of historically congested transmission line, and instead apply the AAR requirements adopted herein to all transmission lines, we do not address comments related to the NOPR's proposed definition of historically congested transmission line. To the

[200] Potomac Economics Comments at 7–8.

[201] Exelon Comments at 1.

[202] EEI Comments at 5.

[203] PJM Comments at 2.

[204] New England State Agencies Comments at 5–6, 10–11.

[205] TAPS Comments at 5.

[206] Indicated PJM Transmission Owner Comments at 5–6; Exelon Comments at 14; AEP AD19–15 Post Technical Conference Comments at 3.

[207] Exelon Comments at 8; Indicated PJM Transmission Owner Comments at 5–6; AEP Post-Technical Conference Comments at 2–3; September 2019 Technical Conference, Day 1 Tr. at 180–181.

[208] NOPR, 173 FERC ¶ 61,165 at P 87.

[209] Although requests for network transmission service are typically long-term requests, meriting their evaluation using seasonal line ratings, we note the Commission's finding in Order No. 890 that the minimum term for network transmission service should be the same as the minimum time period used for firm point-to-point transmission service (*i.e.,* daily). *See Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (Mar. 15, 2007), 118 FERC ¶ 61,119, at P 1505, *order on reh'g,* Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), 121 FERC ¶ 61,297 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009). As such, any requests for transmission service that fall within the near-term threshold defined herein would qualify as near-term network transmission service.

[210] Additionally, we add references to interruption or curtailment of near-term point-to-point transmission service occurring pursuant to 13.6 of the *pro forma* OATT to Attachment M in order to ensure consistent treatment of firm and non-firm point-to-point transmission service.

[211] NOPR, 173 FERC ¶ 61,165 at P 89.

[212] *Id.* P 90.

[213] After the day-ahead market process takes place, RTOs/ISOs typically perform one or more residual unit commitment processes, or what we refer to here as RUC, to address remaining resource gaps and reliability issues or to manage uncertainty and the potential for real-time operational issues. The exact names, definitions, and market processes implementing what we refer here to as RUC processes differ across RTOs/ISOs. For example, CAISO refers to its process as residual unit commitment, SPP uses reliability unit commitment, and MISO uses reliability assessment commitment. For simplicity, however, this final rule uses the term RUC to refer to all of these relevant processes in all of the RTO/ISO markets interchangeably.

[214] NOPR, 173 FERC ¶ 61,165 at P 91. The statement ''(and in any relevant related models)'' was intended to encompass all RUC processes within the timeframe. In the interest of clarity, we modify the NOPR proposal here to make that more explicit.

extent that commenters were arguing for a narrower application than what we adopt in this final rule, below we explain the basis for application of the AAR requirements to all transmission lines.

91. Finally, we alter the proposed compliance schedule. Specifically, we require each transmission provider to submit a compliance filing within 120 days of the effective date of this final rule to incorporate into its OATT the changes adopted herein consistent with *pro forma* OATT Attachment M and the changes to the Commission's regulations set forth below. Additionally, we further require that all requirements adopted herein be fully implemented no later than three years from the compliance filing due date established by this final rule.

92. In response to comments received in response to the NOPR, we modify the NOPR proposal's defined term ''near-term point-to-point transmission service'' to instead be ''near-term transmission service.'' As a result, the AAR requirements will apply to requests for near-term network transmission service, near-term secondary service, and near-term point-to-point transmission service, provided that such service meets the 10-day threshold defined in the near-term transmission service definition. We agree with TAPS that it would be inappropriate to apply the AAR requirements only to requests for near-term point-to-point transmission service and not to requests for near-term network and near-term secondary service because secondary service comes before non-firm point-to-point transmission service in curtailment priority.[215] More generally, we find that a requirement to use AARs on all types of near-term transmission service will better ensure that transmission line ratings are accurate and that wholesale rates are just and reasonable.

93. Although commenters broadly raise concerns with adopting transmission line ratings that may fluctuate widely or contend that implementing AARs on certain transmission lines may not yield benefits, we do not find that these concerns and arguments overcome the need to improve the accuracy of transmission line ratings through applying the AAR requirements to all transmission lines. Specifically, we decline to accommodate requests for more targeted AAR requirements in which transmission providers would either have flexibility to identify candidate transmission lines or the Commission would require AAR implementation on only priority transmission lines, such as only on historically congested lines.

94. We recognize commenters' concerns, such as those from NRECA/LPPC, that the promised benefits, costs, and risks of implementing AARs may not be evenly distributed nationwide.[216] Nevertheless, we find that with the broad AAR requirements adopted herein, the overall benefits via savings to load and lower congestion charges to generators will on balance outweigh the costs. Moreover, we acknowledge the difficulty of knowing in advance all the locations and situations in which the benefits of AAR implementation will outweigh the costs. Given the difficulty in predicting unexpected congestion before it happens, narrowing the scope of the AAR requirements would limit the ability of these reforms to ensure just and reasonable wholesale rates. In particular, we find that the AAR requirements adopted in this final rule are beneficial in mitigating the impact of transient congestion, *i.e.,* temporary or short-term congestion that does not occur on a regular basis, such as congestion caused by unexpected equipment outages or other unusual conditions. Furthermore, given the increasing occurrence of extreme weather events, we expect that assessing the benefits of broader AAR implementation based on historical congestion likely understates the potential savings associated with implementation of the AAR requirements adopted in this final rule. By contrast, the record demonstrates that AAR implementation costs are predominantly one-time investment costs in EMS improvements to accommodate AARs, implementation of a ratings database, and review (and potentially reset) of protective relays settings.[217] Once these costs have been incurred, the incremental cost of applying AARs to additional transmission facilities is minimal.[218]

95. Attempts to anticipate the situations in which AARs will not be cost beneficial (*e.g.,* attempts to forecast locations and situations in which there will be future congestion and deploy AARs in only those anticipated situations) will necessarily be imperfect and complex, especially during infrequent but consequential events. Additionally, since many emergencies may come and go before new AARs can be developed and implemented for newly congested transmission lines, a more targeted AAR requirement advocated by some commenters may not accurately represent system transfer capability in such critical situations. As the Commission recognized in the NOPR, congestion is difficult to predict, particularly during emergency conditions.[219] The 2019 FERC and NERC Staff Report on the January 2018 South Central cold weather event illustrates this point.[220] As shown by that event, during times of emergency or system stress, flows may change considerably from normal operations and the increased transfer capability provided through AARs may prove valuable even on transmission lines that are not typically congested.[221] In addition, in the February 2021 cold weather event, MISO experienced unprecedented east-to-west flows throughout the footprint and accrued $773 million in congestion charges in just a few days.[222] We note that with broad AAR implementation, given Potomac Economics' finding that AAR implementation consistently results in savings of approximately 5% to 8% of total congestion,[223] congestion cost savings from this single event might have exceeded the total costs of AAR implementation in the region. Moreover, many argue that the changing generation mix makes congestion prediction even more difficult.[224] Additionally, AAR implementation itself will have secondary consequences for congestion patterns, as changes to transmission line ratings may change generation dispatch patterns and, by extension, congestion patterns. Such secondary congestion consequences may only be able to be promptly addressed by a broad AAR requirement that applies to all transmission lines.

96. Beyond congestion costs, during times of stressed system conditions, operators in RTOs/ISOs might have to

[215] TAPS Comments at 18–20.

[216] NRECA/LPPC Comments at 15.

[217] Exelon Comments at 8–9.

[218] *Id.* at 8; Indicated PJM Transmission Owner Comments at 5–6; AEP Post-Technical Conference Comments at 2–3; September 2019 Technical Conference, Day 1 Tr. at 180–181.

[219] NOPR, 173 FERC ¶ 61,165 at P 93.

[220] 2019 FERC and NERC Staff Report, *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018,* at 96 (July 2019) (FERC and NERC Staff Report), *https://www.ferc.gov/sites/default/files/2020-05/07-18-19-ferc-nerc-report_0.pdf.*

[221] NOPR, 173 FERC ¶ 61,165 at P 93.

[222] OMS Comments at 10; OMS Reply Comments at 7; *see* FERC, NERC and Regional Entity Staff Report, *The February 2021 Cold Weather Outages in Texas and the South Central United States* (Nov. 16, 2021), *https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and.*

[223] Potomac Economics Comments at 8; Potomac Economics Post-Technical Conference Comments at 5–6.

[224] ACPA/SEIA Comments at 8, 11; EPSA Comments at 4; New England State Agencies Comments at 6.

spend limited time requesting AARs from transmission owners on an *ad hoc* basis.[225] AAR implementation on all transmission lines will help ensure transmission providers have sufficient transfer capability and flexibility to manage emergency conditions. Delayed access to AARs could force transmission operators to spend precious time reaching out to transmission owners for AARs, rather than using such time to manage emergency conditions. Instead, AAR implementation on all transmission lines will alleviate the need for transmission providers to spend time requesting AARs when there may be no time to waste.

97. Further, arguments that the benefits of broad AAR implementation will not outweigh the costs are inconsistent with the ERCOT and PJM transmission owners' actual AAR implementation experience. AEP has been implementing AARs for decades and has realized both reliability and financial benefits for its customers.[226] As Indicated PJM Transmission Owners state, transmission owners in PJM provide AARs for each of their facility ratings.[227] PJM further states that the use of AARs is commonplace among the overwhelming majority of transmission owners in PJM.[228] As New England State Agencies observe, the broad experience implementing AARs does not support the argument that AARs are too difficult or costly to implement.[229]

98. In response to MISO Transmission Owners' argument that the Commission should not rely on Potomac Economics' estimates of the benefits of AARs, our rationale for the AAR requirements adopted in this final rule is not solely based on Potomac Economics' analysis. Rather, our rationale is based on the finding that AARs on all transmission lines will ensure that wholesale rates more accurately reflect the cost of the wholesale service being provided, and, thus that those wholesale rates are just and reasonable. This finding is further informed by the widespread benefits experienced by commenters implementing AARs broadly in PJM and ERCOT, the expectation that the benefits of AAR implementation will be greatest on transmission lines that are frequently congested, along with the understanding of the difficulty of predicting congestion and the low incremental cost to implement AARs. However, in response to MISO Transmission Owners' critique that Potomac Economics' analysis erroneously assumes that all transmission lines in MISO are ambient adjustable, we note that, in response to MISO Transmission Owners' comments, Potomac Economics states that its analysis does not assume that all transmission lines are able to be rated using AARs and instead removes from the analysis all transmission lines that currently have summer ratings equal to winter ratings.[230] With respect to MISO Transmission Owners' argument that Potomac Economics' analysis erroneously assumes that all transmission lines in MISO are currently using worst-case ambient air temperature assumptions, we note that Potomac Economics does not uniformly assume worst-case 104 degrees Fahrenheit as the basis for adjusting AARs, but instead infers unique transmission owner base assumptions using maximum historical temperatures in each transmission owner service territory.[231] Finally, we disagree with MISO Transmission Owners' assertion that the benefits in Potomac Economics' analysis are inflated because of certain transmission outages or upgrades assumptions. As Potomac Economics explains, there are many generalized and localized factors that might increase or decrease congestion in an individual year and, given the highly complex nature of the electric system, incorporating all of these factors is not possible.[232] Despite certain generalizations, which we believe are likely to render Potomac Economics' analysis conservative, Potomac Economics has consistently found that AARs and emergency ratings will reduce congestion by 10% to 15% annually.[233]

99. We disagree with arguments from Southern Company, EEI, and other commenters that reliability issues may arise because AARs may create difficulties in identifying the most limiting element and similar difficulties and costs associated with complying with Reliability Standard PRC–023–4's transmission relay loadability requirements that depend on maximum published ratings. Reliability Standard PRC–023–4 requires setting transmission line relays at values at or above 115 to 170% of various maximum values for current or power carrying capability, *e.g.,* 115% of the highest seasonal 15-minute Facility Rating of a circuit or 150% of the highest seasonal four-hour Facility Rating of a circuit. We do not agree that this final rule will result in PRC–023–4 related relay setting changes to ''thousands'' [234] of relays, since the relay settings are currently calculated based on practical limitations which in the majority of cases should not exceed AAR values. In addition, PJM has long implemented AARs and, rather than describing reliability challenges, contends that AAR implementation creates reliability benefits.[235] For example, PJM states that the adoption of AARs increases operational flexibility, promotes a more efficient use of the transmission system, and results in more reliable system dispatch and cost-effective market operations.[236] Transmission owners in PJM have implemented AARs despite the initial cost incurred to update relay settings. Likewise, AEP submits that it has implemented AARs for decades and that AAR implementation presents reliability benefits.[237]

100. In response to concerns about the additional challenges associated with incorporating AARs into ATC, as raised by Duke Energy, EEI, and several non-RTO/ISO transmission owners with service territories in the Western Interconnection, we note that such TTC calculation practices, and in turn ATC practices, particularly those which only update TTC values annually,[238] will need to be updated in order to comply with this final rule's AAR requirements. In fact, such practices may already be out of compliance with the Commission's *existing* ATC calculation rules. For example, while Order No. 890 provides transmission providers with significant flexibility in what approach they take to determine ATC in their transmission paths, it also requires that ATC values (regardless of the approach used to calculate them) be ''updated and benchmarked to actual events.'' [239] Furthermore, in May 2021, the Commission issued Order No. 676–J,[240] in which the Commission (among other things) codified the ''fundamentals of Order No. 890 requirements for calculating ATC'' in the Commission's regulations.[241] Specifically, Order No.

[225] OMS Reply Comments at 7; *see also* FERC and NERC Staff Report at 56–59; ISO–NE, *Cold Weather Operations: December 24, 2017—January 8, 2018,* at 41 (Jan. 16, 2019), *https://www.iso-ne.com/static-assets/documents/2018/01/20180112_cold_weather_ops_npc.pdf.*

[226] AEP Comments at 3.

[227] Indicated PJM Transmission Owners Comments at 6–7.

[228] PJM Comments at 2.

[229] New England State Agencies Comments at 11–12.

[230] Potomac Economics Reply Comments at 3–5.

[231] *Id.* at 2–3.

[232] *Id.* at 5–6.

[233] *Id.* at 5.

[234] EEI Comments at 5–6.

[235] PJM Comments at 7.

[236] *Id.* at 2.

[237] AEP Comments at 3.

[238] EEI Comments at 11.

[239] Order No. 890, 118 FERC ¶ 61,119 at P 290.

[240] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–J, 86 FR 29491 (June 2, 2021), 175 FERC ¶ 61,139 (2021).

[241] *Id.* P 38.

676–J revised section 37.6(b)(2)(i) of the Commission's regulations to codify that ATC calculations must be ''conducted in a manner that is . . . consistent with anticipated system conditions and outages for the relevant timeframe.'' [242] We find that transmission line ratings represent one such ''system condition'' with which ATC calculations must be consistent.

101. In response to specific concerns from PacifiCorp and BPA about nomogram constraints, we note that nomogram constraints are typically used to represent transfer capability on facilities with stability or voltage limitations. The AAR requirements adopted in *pro forma* OATT Attachment M exempt transmission lines whose ratings are not affected by ambient air temperature.

102. In response to comments from NERC requesting further consideration of AAR implementation on long transmission lines, and from LADWP, and other, primarily western transmission owners, which describe AAR implementation challenges due to the diversity in terrain and microclimates that western transmission lines traverse, we agree that longer transmission lines can and will experience differing weather conditions across the length of those transmission lines. To maintain reliable system operations, we expect transmission providers to implement the transmission line rating calculated based on the most limiting element under the prevailing weather conditions (actual or anticipated) at the relevant point on the transmission line. In the case of transmission conductors, which might be exposed to different weather conditions along the length of the transmission line, transmission providers must rate such elements using the most limiting weather conditions, in accordance with good utility practice. However, this requirement does not require the installation of field devices or sensors, as some transmission owners suggest.[243] Rather, as proposed in the NOPR, the AAR requirements can be met through the use of a weather data service.[244]

103. Similarly, in response to comments from BPA that if BPA uses AARs as proposed, it would need to make its current liberal wind assumptions (and therefore, the resultant transmission line ratings) more conservative to mitigate the risk of operating near the conductor limit,[245] we reiterate that the AAR requirements will ensure more accurate transmission line ratings, not necessarily higher transmission line ratings. We further clarify that there is no requirement to change wind speed assumptions. Utilities have operated reliably for decades with AARs.[246] However, if any transmission owner finds it necessary to change its wind speed assumptions consistent with good utility practice, we clarify that nothing in this rulemaking prevents it from doing so.

2. Specific AAR Implementation Requirements

a. Use of AARs 10-Days Forward in Transmission Service and Operations

i. NOPR Proposal

104. In the NOPR, within the context of the AAR requirements described and adopted above in Section IV.B.1, the Commission proposed to apply the AAR requirements to transmission service that starts/ends within 10 days, to the curtailment or interruption of point-to-point transmission service anticipated to occur (start and end) within the next 10 days, and to the curtailment of network transmission service or secondary service or redispatch network transmission service or secondary transmission service anticipated to occur (start and end) within 10 days (hereinafter referred to as the ''10-day threshold'').

105. The Commission justified the proposed 10-day threshold as a reasonable cut-off beyond which forecasts may not be accurate enough for AARs to provide significant value, and by stating that the Commission believed that such a limit would reasonably accommodate requests for weekly point-to-point transmission service. The Commission further noted that ambient air temperature forecasts for intervals beyond the proposed 10-day threshold tend to converge to the longer-term ambient air temperature forecasts used in seasonal line ratings.[247] Finally, the Commission noted that its proposal allowed transmission providers to determine (consistent with good utility practice) the needed degree of certainty when constructing their forecasts of ambient air temperature.[248]

106. With respect to RTOs/ISOs, the Commission proposed to require AARs as the relevant transmission line rating for any point-to-point transmission service offered (*e.g.,* at their borders). However, the Commission also recognized that RTOs/ISOs have Commission-approved variations from the *pro forma* OATT to manage internal congestion and initiate curtailments and/or redispatch of transmission service within their footprints through mechanisms such as SCED and SCUC. To accommodate these variations, the Commission proposed that RTOs/ISOs comply with the proposed requirements by revising their OATTs to require implementation of AARs within their SCED and SCUC models (and in any relevant related models) in both the day-ahead and real-time markets and any intra-day RUC processes. For real-time markets, the Commission proposed that RTOs/ISOs update their AARs at least hourly. For any point-to-point transmission service offered by RTOs/ISOs (*e.g.,* at their borders), the Commission proposed that the AAR requirements discussed above for point-to-point transmission service would apply. As justification, the Commission explained that day-ahead markets already rely upon forecasts of weather to inform next-day load and intermittent generation availability. The Commission preliminarily agreed with PJM that temperatures can be forecast with a reasonable degree of certainty in day-ahead markets.[249] The Commission further stated that, within its NOPR proposal, transmission providers could (consistent with good utility practice) determine the needed degree of certainty when constructing their forecasts of ambient air temperature, and that, because one of the goals of the day-ahead market is to align prices with those eventually determined in the real-time market, maintaining policy consistency between the day-ahead and real-time markets, where practical, is desirable.[250]

ii. Comments

107. Many commenters generally support the Commission's proposed AAR requirements without specifically discussing the 10-day threshold.[251] Industrial Customer Organizations specifically agree with the Commission that implementing AARs in near-term transmission service will more accurately reflect the cost of delivering

[242] *Id.*

[243] WAPA Comments at 7–9; PG&E Comments at 9–10.

[244] NOPR, 173 FERC ¶ 61,165 at P 95.

[245] BPA Comments at 4.

[246] AEP Comments at 3.

[247] NOPR, 173 FERC ¶ 61,165 at PP 87–88.

[248] *Id.* P 102.

[249] PJM Post-Technical Conference Comments at 3.

[250] NOPR, 173 FERC ¶ 61,165 at P 102.

[251] EPSA Comments at 2; Clean Energy Parties Comments at 2–3; R Street Institute Comments at 2–3; TAPS Comments at 1–3; ACORE Comments at 3; OMS Comments at 2; New England State Agencies Comments at 10; Vistra Comments at 2–3.

energy to load.[252] CEA states that using AARs to calculate transmission line ratings for service requests up to 10 days has proven to be reliable and to provide benefits to effective and reliable transmission operations.[253] EDFR contends that the distinction between AARs and seasonal line ratings depending on the applicable time frame appears sensible.[254] ACPA/SEIA state that they support the Commission's proposed requirements for near-term point-to-point transmission service and curtailments expected to occur within the next 10 days.[255] The Ohio FEA does not take a firm position, but states that implementing AARs for the next 10 days is reasonable.[256] OMS states that the weather data required to implement AARs is already widely available through public sources and used for load and resource forecasting.[257]

108. While not supporting or opposing the proposed 10-day threshold, EPRI recommends an independent assessment that documents the accuracy and risk associated with weather forecast data, explaining that not all weather forecast data will be appropriate for transmission line ratings and that some limiting spans run through microclimates. EPRI further explains that inaccurate forecast risks can be mitigated by identifying and implementing corrective factors to allow forecasts to be used consistent with good utility practice. EPRI suggests utility-specific rating studies would be required to assess and mitigate forecast risk,[258] to update and revise weather condition assumptions, and possibly to adjust transmission reliability margins.[259] EPRI contends that further studies are needed to determine a technical basis for updated wind speed assumptions and that such studies may take between one and two years.[260] Similarly, NERC asserts that the Commission should consider how variations in the temperature and load forecast should be addressed, what temperature sets should be used when considering requests to grant firm transmission service, and whether additional AAR calculation information should be incorporated into transmission line rating methodologies.[261]

109. Other commenters also discuss risk management for forecasted ambient air temperatures. For example, Entergy states that forecasted ambient air temperatures should include appropriate safety margins to account for historical forecast uncertainty.[262] Similarly, the SPP MMU states that, ideally, congestion costs should, to some extent, represent the risk assumed to serve the load.[263] Finally, the CAISO DMM argues that AAR requirements should allow leeway for RTOs/ISOs to adjust modeled transmission limits for reliability reasons, as CAISO does in the case of flowgates and nomograms whose modeled flows frequently differ from actual flows.[264] The CAISO DMM asserts that lower or more conservative transmission limits might be needed for temporally distant intervals to ensure commitments made in an advisory interval horizon are feasible in the binding market interval and at the time of power flow. The CAISO DMM further asserts that lower day-ahead transmission limits could promote the feasibility of day-ahead commitments in real time.[265]

110. Many RTOs/ISOs, however, oppose or urge caution on the proposed 10-day threshold, with many advocating instead for a 48-hour threshold.[266] PJM does not support use of AARs in ATC calculations beyond 48 hours, arguing that it would require significant system changes and increase the compliance burden.[267] PJM proposes AARs for 48 hours, and a more conservative approach for hours 48–240 to avoid potential volatility and over-selling.[268] Both NYISO and ISO–NE argue that the transmission service offered in their respective regions differs from that contemplated by the *pro forma* OATT, and request flexibility in implementing any transmission line rating requirements.[269]

111. NYISO does not support extending the AAR requirements or DLRs into the day-ahead market, or for use up to 10 days into the future, contending that such a requirement could result in costly and unnecessary uplift payments, which could lead to significant cost increases to customers, and could present reliability concerns if transmission line ratings decline in real time from the day-ahead schedule, forcing NYISO to rapidly reduce the schedules of certain generators while quickly ramping up other generators.[270] NYISO also states that it would consider designating a portion of transfer capability to be able to respond to the operational and cost volatility that would come with DLR use, although such a process would limit overall efficiency and increase production costs.[271]

112. Without taking a position on the proposed 10-day threshold, CAISO explains that the NOPR proposal would significantly increase the complexity of its day-ahead market and introduce possible variances between real-time and day-ahead schedules.[272] Also without taking a position on the proposed 10-day threshold, SPP states that, to use AARs to evaluate transmission service requests that end within 10 days or as the basis for curtailment, SPP would have to make several technical and process upgrades and align its operating horizon and planning horizon.[273]

113. MISO argues that the vast majority of the benefit from AARs is in addressing real-time congestion, and that implementing AARs in MISO's day-ahead market would be difficult to do in less than three years, while offering comparatively little benefit. MISO further claims that requiring hourly AARs 10 days in advance will provide little to no benefit because the accuracy of temperature forecasts diminishes considerably beyond 48 hours, and precipitously by the five to seven day mark.[274] MISO urges the Commission to limit AAR implementation to 48 hours from the start of the operating day.[275] Similarly, Potomac Economics recommends that the Commission require that AARs be used in the day-ahead and real-time markets, stating that this will allow the RTOs/ISOs to focus their resources on improving the transmission line ratings that will generate almost all of the savings.

114. Similar to RTOs/ISOs, transmission owners also urge caution on, or oppose, the proposed 10-day threshold.[276] Those transmission

[252] Industrial Customer Organizations Comments at 4–6.

[253] CEA Comments at 2.

[254] EDFR Comments at 7.

[255] ACPA/SEIA Comments at 16–17.

[256] Ohio FEA Comments at 5.

[257] OMS Comments at 11.

[258] EPRI Comments at 10–11.

[259] *Id.* at 12. Transmission reliability margin, or TRM, means the amount of TTC necessary to provide reasonable assurance that the interconnected transmission network will be secure, or such definition as contained in Commission-approved Reliability Standards. 18 CFR 37.6(b)(1)(viii) (2021)..

[260] EPRI Comments at 12.

[261] NERC Comments at 7.

[262] Entergy Comments at 11.

[263] SPP MMU Comments at 1.

[264] CAISO DMM Comments at 3, 4–5, 7.

[265] *Id.* at 3.

[266] PJM Comments at 7–8; ISO–NE Comments at 10; MISO Comments at 10, 16–17; NYISO Comments at 13–14.

[267] PJM Comments at 7–8.

[268] *Id.*

[269] ISO–NE Comments at 10; NYISO Comments at 9.

[270] NYISO Comments at 13–14.

[271] *Id.*

[272] CAISO Comments at 9–11.

[273] SPP Comments at 5–7, 9.

[274] MISO Comments at 18.

[275] *Id.* at 19.

[276] BPA Comments at 7; Indicated PJM Transmission Owners Comments at 2; Dominion

owners generally argue that there is too much risk forecasting 10 days forward and generally support more limited forecasting of either 24 [277] or 48 hours.[278] For example, Indicated PJM Transmission Owners contend that forecasting AARs beyond two or three days in advance provides little benefit because weather conditions beyond that are too difficult to predict.[279] Dominion similarly argues there is no benefit to extending the AAR requirements beyond three to five days because forecasts beyond five days tend to reflect seasonal averages.[280] Entergy contends that forecasts should be limited to three days and include appropriate safety margins for historical forecast uncertainty and geographic variability.[281]

115. Several commenters argue that requiring AARs 10 days in advance presents the potential problem of selling transmission service based on a given ambient air temperature forecast only for the temperature to be higher in real time, causing curtailments or safety and reliability risks.[282] BPA argues that it could result in an inefficient use of the transmission system because transmission could be sold, curtailed, and then available again, all prior to the transmission service window.[283] NYTOs note that, because there is generally less flexibility in real time, if operators do not have sufficient resources to restore flow to a lower limit within the required time, they may need to shed load or damage equipment.[284]

116. Arguing that the Commission should not extend the AAR requirements beyond the operating day, MISO Transmission Owners state that using AARs any further forward than in real time introduces uncertainty and error. MISO Transmission Owners acknowledge that these risks exist today, but argue that AARs introduce further complexity and explain that lowering transmission line ratings in real time would compound the problems.[285] Similarly, Duke Energy presents an example of transmission sold based on a 60 degree Fahrenheit temperature forecast four days forward and, on the operating day having the transmission system oversubscribed, with greater pressure on operators to curtail transmission schedules to avoid safety and reliability risks, because the actual temperature was 75 degrees Fahrenheit.[286] Southern Company states that AARs have the potential to create reliability concerns if transmission service is oversold due to inaccurate weather forecasts, especially for transmission service that is scheduled 10 days ahead.[287] Southern Company also states that reliability issues may arise because AARs may create difficulties in identifying the most limiting element, which may change as the temperature changes, for the purpose of complying with Reliability Standard FAC–008–5, and similar difficulties in complying with Reliability Standard PRC–023 relay loadability requirements that depend on maximum published ratings.[288]

117. NRECA/LPPC contend that such a requirement is unduly burdensome because most of the benefits of using AARs are for real-time and day-ahead transactions. NRECA/LPPC add that hourly weather forecasts and the resulting hourly transmission line ratings are unlikely to be accurate for more than a very few days.[289] IID explains that the Commission should provide flexibility in the forward AAR application period, noting that weather patterns may not be stable everywhere. IID contends that the Commission should consider implementation challenges associated with looking 10 days ahead, calculating what could be several hundred transmission line ratings per year.[290]

118. EEI and APS contend that AARs should only be implemented in real-time operations.[291] EEI contends that such AAR values should not extend to the day-ahead or intra-day unit commitment values and that hourly ATC for up to 10 days would introduce uncertainty and ATC fluctuations that result in curtailment of sold service and resale of previously curtailed service. EEI further explains that the Commission has previously recognized the reliability harm associated with overestimated ATC and explains that the harm may result from using hourly AARs for transmission service available for up to 10 days. EEI also states that the NOPR proposal for hourly ATC for every hour in the next 10 days is complex, with a burden that may outweigh the benefits since the NOPR proposal fundamentally requires a TTC determination. However, EEI states that TTC is path dependent and is based on many transmission line ratings, contingencies, and power flow assumptions. Because of this complexity, some transmission owners only determine TTC annually or less frequently and, for these transmission owners, the NOPR proposal for transmission providers to recalculate TTC every hour, and perform 240 calculations every hour, is infeasible.[292] NERC contends that the Commission should consider how entities should reconcile AARs used for planning and operations functions. NERC also argues that there is potential confusion regarding transmission line ratings used in transmission operator operations and planning system operating limits and interconnection reliability operating limits, but believes the confusion can be avoided through the timing of Commission action to retire the NERC Modeling, Data, and Analysis (MOD) A Reliability Standards.[293]

119. NYTOs explain that requiring AARs for up to 10 days forward, even for a subset of the transmission system, would be a significant change requiring major software buildout and corresponding market design changes, which would create a significant burden on NYISO and its associated utilities. NYTOs assert that this burden would be further complicated by the fact that vendor availability for such a buildout is unknown.[294] NYTOs also explain that implementing AARs 10 days forward has the potential to create reliability concerns through disconnects between forecasted and real-time conditions [295] and that extending the AAR requirements to the day-ahead market would make security analysis more difficult.[296] LADWP contends that the Commission should align any final rule requirements with NERC Reliability Standards and asserts that the proposed 10-day threshold would conflict with

Comments at 8–9; Duke Energy Comments at 8–9; SDG&E Comments at 2–3; Southern Company Comments at 5–6; MISO Transmission Owners Comments at 15–16; EEI Comments at 10–11; APS Comments at 8; NYTOs Comments at 5–6; AEP Comments at 6–7; NRECA/LPPC Comments at 19–20; SDG&E Comments at 2–3; LADWP Comments at 7; ITC Comments at 7–9.

[277] BPA Comments at 7; Duke Energy Comments at 8–9; Southern Company Comments at 5–6; MISO Transmission Owners Comments at 15–16; EEI Comments at 10–11; APS Comments at 8; NYTOs Comments at 5–6.

[278] AEP Comments at 6–7; NRECA/LPPC Comments at 19–20; SDG&E Comments at 2–3; LADWP Comments at 7.

[279] Indicated PJM Transmission Owners Comments at 2.

[280] Dominion Comments at 9.

[281] Entergy Comments at 11.

[282] MISO Transmission Owners Comments at 15–16; Duke Energy Comments at 8–9; Southern Company Comments at 5–6; NYTOs Comments at 5.

[283] BPA Comments at 7.

[284] NYTOs Comments at 5–6.

[285] MISO Transmission Owners Comments at 15–16.

[286] Duke Energy Comments at 8–9.

[287] Southern Company Comments at 5–6.

[288] *Id.* at 6.

[289] NRECA/LPPC Comments at 19–20.

[290] IID Comments at 4–6.

[291] APS Comments at 8; EEI Comments at 10–12.

[292] EEI Comments at 10–12.

[293] NERC Comments at 7–8.

[294] NYTOs Comments at 5–6.

[295] *Id.*

[296] *Id.* at 7.

the requirements specified in Reliability Standard MOD–001–1a that ATC be calculated hourly for the next 48 hours.[297] Moreover, recognizing the variability in weather, LADWP asks that system operators be afforded the flexibility to recall transfer capability awarded during moderate conditions at least 24 hours in advance.[298]

iii. Commission Determination

120. We adopt the NOPR proposal to require transmission providers to use AARs when evaluating the availability of and requests for near-term transmission service (under sections 15, 17, 18, and 29 of the *pro forma* OATT) [299] as set forth under ''Obligations of Transmission Provider'' in the *pro forma* OATT Attachment M adopted in this final rule. We further adopt the Commission's proposal in the NOPR to require transmission providers to use AARs as the relevant transmission line rating when determining whether to curtail or interrupt point-to-point transmission service (under sections 13.6 and/or 14.7 of the *pro forma* OATT) if such curtailment or interruption is both necessary because of issues related to flow limits on transmission lines and anticipated to occur (start and end) within the next 10 days. Additionally, we adopt the Commission's proposal in the NOPR to require transmission providers to use AARs as the relevant transmission line rating when determining whether to curtail network or secondary service (under section 33 of the *pro forma* OATT) or redispatch network or secondary service (under sections 30.5 and/or 33 of the *pro forma* OATT), if such curtailment or redispatch is both necessary because of issues related to flow limits on transmission lines and anticipated to occur (start and end) within 10 days of such determination (*i.e.,* the 10-day threshold). Finally, consistent with the NOPR, we clarify that AARs must be calculated using the temperature at which *there is sufficient confidence that the actual temperature will not be greater than that temperature* (*i.e.,* expected temperature plus an appropriate forecast margin).[300]

121. We believe that the 10-day threshold is justified by: (1) The additional benefits gained by adopting a threshold that permits weekly point-to-point transmission service requests to be evaluated using AARs; (2) the additional benefits gained by the use of daytime/nighttime ratings (discussed below in Section IV.B.2.c) within the 10-day threshold; (3) the adequate accuracy of ambient air temperature forecasts combined with the ability to implement appropriate forecast margins to alleviate operational concerns associated with persistently decreasing real-time transmission line ratings; and (4) the low relative cost difference between a shorter forward threshold and the proposed 10-day threshold. As the Commission stated in the NOPR, AAR requirements up to 10 days forward will permit weekly point-to-point transmission service to be evaluated using AARs. Because weekly point-to-point transmission service is one of several types of transmission products provided under the Commission's *pro forma* OATT, by adopting the 10-day threshold for AAR implementation rather than a shorter forward duration, weekly point-to-point transmission customers will receive the benefits of AAR implementation rather than only transmission customers taking shorter duration transmission service, thereby not just increasing the expected benefits from the implementation of AARs by improving the accuracy of transmission line ratings for a wider range of transmission services but also for a potentially wider range of transmission customers.

122. We also require AARs to include separate daytime and nighttime ratings. This daytime/nighttime ratings requirement, combined with the addition of weekly point-to-point transmission service, will produce further benefits in forward nighttime hours that would not see such benefits if the AAR requirements were imposed over a timeframe shorter than 10 days forward. These benefits of increased accuracy that result from applying daytime/nighttime ratings to weekly point-to-point transmission service and to shorter duration transmission service up to 10 days forward are significant on their own, even in the unlikely event that the use of ambient air temperature forecasts 10 days forward results in no hours where daytime AARs are greater than seasonal line ratings. In other words, if we were to adopt a shorter threshold for the AAR requirements than 10 days forward, the significant benefits derived from the more accurate transmission line ratings during the additional nighttime hours included in the 10-day threshold would be lost. We further note that weather forecast quality is not static, but rather is steadily improving such that the benefits of the 10-day threshold requirement are likely to increase over time.[301]

123. Although we acknowledge that the accuracy of forecasts decreases the further in advance the forecast is made, we disagree that ambient air temperature forecasts made 10 days in advance are so inaccurate that they cannot provide any benefits when used as part of AARs, even when adjusted with appropriate forecast margins, as discussed herein. Neither commenters supporting nor opposing the 10-day threshold provide quantitative evidence related to the accuracy of 10-day forecasts; however, a published analysis of the NOAA National Blend of Models (NBM) forecast—one of the publicly available NOAA forecasts that looks out at least 10 days—indicates that the mean absolute error for 240 hour (10 day) forward continental United States surface temperature forecasts was approximately four to six degrees Fahrenheit in July to November 2016.[302] We find that such levels of error would likely allow for a meaningful number of hours in any season where a 10-day forward AAR would provide benefits relative to the seasonal line rating. We also note that this finding is consistent with the support for the 10-day threshold by various commenters.[303]

124. We do not find persuasive arguments that the AAR requirements adopted in this final rule will be unduly burdensome. Contrary to such assertions, because we expect the increased costs of implementing AARs under a 10-day threshold (as opposed to a shorter threshold) to be primarily related to increased forecasting and data storage/hardware needs, we do not expect such costs to be excessive. Moreover, in certain situations, especially outside the RTO/ISO context, adopting the 10-day threshold will

[297] LADWP Comments at 7.

[298] *Id.* at 6.

[299] *See supra* P 85.

[300] *See* NOPR, 173 FERC ¶ 61,165 at PP 97, 102.

[301] *See, e.g.,* NOAA, *Annual WPC Mean Absolute Errors, https://www.wpc.ncep.noaa.gov/images/hpcvrf/maemaxyr.gif* (last visited Oct. 28, 2021) (showing NOAA data on the evolving accuracy of their Weather Prediction Center forecasts of daily high temperature).

[302] Tabitha Huntemann, Daniel Plumb, and David Ruth, *Verification of the National Blend of Models* (2017), *https://www.weather.gov/media/mdl/AMS2017-NBMVerification.pdf.* We note that this analysis was applicable to the 2016 National Blend of Models (NBM) Version 2.0 forecast, and that several improved versions of the NBM forecast have been implemented since that time. The current NBM Version 4.0 was implemented in September 2020. *See NBM: National Blend of Models, https://vlab.noaa.gov/web/mdl/nbm.* While we take notice of this NBM forecast accuracy data as a point of reference, we emphasize that the NBM forecasts are just one example of the types of forecasts that transmission providers might rely on in complying with this final rule.

[303] CEA Comments at 2; EDFR Comments at 7; Ohio FEA Comments at 5; New England State Agencies Comments at 9–10; ACPA/SEIA Comments at 13.

allow more transfer capability to be made available to customers than simply adopting seasonal worst-case assumptions. In addition, as CEA states, using AARs to calculate transmission line ratings for service requests up to 10 days has proven to be reliable and to provide benefits to effective and reliable transmission operations.[304] In that context, commenters have not provided evidence that the cost to procure or develop 10-day forward forecasts is materially different from the cost to procure or develop two- or three-day forward forecasts and, in any case, that such cost outweighs the added benefits of extending the forward period from two or three days to 10 days. For these reasons, we expect the material benefits resulting from adopting the 10-day threshold to, on balance, outweigh the costs.

125. We emphasize that any benefit from the AAR requirements, and the 10-day threshold in particular, should be compared to the relative costs of alternatives. And we find that the cost associated with requiring AARs for additional days forward is essentially the cost of accessing, storing, and processing the additional forecast data, and the cost of calculating, storing, and incorporating into transmission service the additional hours of AARs. As we expect this process will be largely automated, we do not anticipate that the cost of the 10-day threshold, as opposed to a shorter threshold, will be significantly higher. Although the question of where to draw the line in terms of the time threshold for AAR implementation is not clear cut, we find that 10 days strikes an appropriate balance between the benefits of more accurate transmission line ratings that result from the AAR requirements adopted in this final rule, and the likely costs of implementing those requirements.

126. We note that some commenters may have misunderstood the Commission's proposal in the NOPR as requiring the use of *expected* ambient air temperatures in forecasts of AARs for future periods. That is, they may have read the Commission's NOPR proposal as requiring that if the forecasted ambient air temperature at a given transmission line 10 days in advance (without any forecast margin applied, *i.e.,* the expected temperature) was X degrees, that the transmission provider was required to use an AAR for that hour 10 days forward that assumed an air temperature of X degrees. This is not the case. Rather, AARs must be calculated using the temperature *at which there is sufficient confidence that the actual temperature will not be greater than that temperature* (*i.e.,* expected temperature plus an appropriate forecast margin).[305] This approach to calculations is consistent with EPRI's recommendation and also comments from Entergy and the CAISO DMM, which suggest margins to account for forecast error.[306]

127. In response to requests for clarification from BPA, LADWP, and EEI that transmission providers can curtail transmission sold at least 24 hours in advance, consistent with existing curtailment prioritization, should temperature forecasts dictate such curtailment, we confirm that we are not changing the existing curtailment prioritization. In implementing the 10-day threshold, it may be necessary in some instances for transmission providers to curtail transmission sold based on ambient air temperature forecasts (including forecast margins) that end up being lower than real-time temperatures. Although transmission providers will continue to curtail transmission at times due to unrealized ambient air temperature assumptions, the need for such curtailments should be decreased as a result of the AAR requirements adopted herein.[307] We reiterate that under the AAR requirements that we adopt in this final rule, transmission providers have the latitude (and obligation) to develop accurate, safe, and reliable transmission line ratings,[308] and we do not expect that such transmission line ratings will necessitate an increase in the need for curtailments due to inaccurate AARs. If a transmission provider determines (whether during pre-testing of its AAR methodologies or during actual operations) that a given level of forecast margins yields an unreasonable frequency of such curtailment, it should re-evaluate and adjust its forecast margins.

128. We further acknowledge that, in addition to the concerns of some commenters related to forecast margins being too low, certain forecast margins could also prove to be too high. In those instances, as with the implementation of static transmission line ratings, transmission line ratings using unreasonably high forecast margins would also yield inaccurate transmission line ratings and, in turn, would result in an underutilization of existing transmission facilities, price signals based on less transfer capability than is truly available, and wholesale rates that are unjust and unreasonable. Similar to unreasonably low forecast margins, if a transmission provider determines (whether during pre-testing of its AAR methodologies or during actual operations) that a given forecast margin is unreasonably high, it should re-evaluate and adjust its forecast margins.

129. Similarly, contrary to comments from CAISO, NYISO, NYTOs, and EEI that describe the operational risks associated with overestimating ATC,[309] we do not expect that the AAR requirements adopted herein will result in a frequent number of instances when transmission line ratings used in the real-time market are lower than transmission line ratings used in the day-ahead market. Some such instances will occur, but we believe that there is sufficient latitude within our requirements, as discussed above, for day-ahead transmission line ratings to be determined with sufficient forecast margins to avoid this concern. Furthermore, as the Commission stated in the NOPR, day-ahead markets already rely heavily upon weather forecasts to inform next-day load and intermittent generation availability. This final rule does not change reliance upon weather forecasting; instead, the AAR requirements we adopt herein will improve the accuracy of transmission line ratings and, if anything, lead to cost savings to consumers and reliability benefits. Additionally, as PJM's AAR implementation experience demonstrates, temperatures can be forecast day ahead with a reasonable degree of certainty.[310] We also find that operational risks that might result from the use of transmission line ratings in the real-time market that are lower than the transmission line ratings used in the day-ahead market can further be

[304] CEA Comments at 2.

[305] *See* NOPR, 173 FERC ¶ 61,165 at PP 97, 102.

[306] EPRI Comments at 10–12; Entergy Comments at 11; CAISO DMM Comments at 3.

[307] We note, for example, that a typical winter seasonal line rating temperature assumption today is 32 degrees Fahrenheit—a temperature assumption which in many parts of the United States is violated frequently over the current typical six-month ''winter season'' used in seasonal line ratings. Commission Staff Paper at 7; *see also* Midwest Reliability Organization Standards Committee, *Standard Application Guide: FAC–008,* Version 1.1, p. 14 (March 21, 2017), *https://www.nerc.com/pa/comp/guidance/EROEndorsedImplementationGuidance/FAC-008-3%20Standard%20Application%20Guide.pdf.* We expect such assumption violations to be less frequent under our required approach, where transmission providers will apply reasonable forecast margins when developing their AARs

[308] NOPR, 173 FERC ¶ 61,165 at P 97.

[309] NYTOs Comments at 5–6; EEI Comments at 10–12; NYISO Comments at 13–14; CAISO Comments at 9–11.

[310] PJM Comments at 3.

managed and mitigated through the use of AARs in the RUC processes, which will have the benefit of updated temperature forecasts. Finally, we reiterate that PJM and AEP report reliability benefits from AAR implementation.

130. In response to comments from EEI and other transmission owners about the complexities of calculating AARs up to the 10-day threshold, we find that such complexities are predominately reflected in the upfront set-up and investment costs [311] and that these costs will be primarily related to increased forecasting and data storage/hardware needs.

131. In response to NERC's request that the Commission consider how entities should reconcile AARs used for planning and operations functions,[312] we find that AARs used in near-term operations will deviate from those transmission line ratings used in various planning functions. As transmission providers progress closer in time to a given interval, near-term ambient air temperature forecasts will necessarily be updated. These updates will impact TTC, and, as a result, ATC and system operating limits. In addition, regarding implementation of this final rule and currently effective MOD A Reliability Standards,[313] this final rule does not advocate for operating the transmission system beyond the system operating limits and established facility ratings.

132. In response to requests for clarification of the NOPR proposal from NERC and BPA with respect to temperature variations,[314] transmission providers must consider the relevant ambient air temperature forecasts along the transmission line, and determine the transmission line rating based on the most limiting combination of equipment limitations and forecasted local ambient air temperature along the transmission line. We note that NERC additionally requested that the Commission consider how variations in load forecasts would be addressed when using values for each of the 240 hours in the next 10 days for each transmission line in granting firm point-to-point transmission service.[315] In response, we reiterate that the requirements adopted herein are designed to ensure accurate transmission line ratings. We also reiterate that AARs must be calculated using the temperature *at which there is sufficient confidence that the actual temperature will not be greater than that temperature* (*i.e.,* expected temperature plus an appropriate forecast margin). We further clarify, in response to NERC, that transmission line rating methodologies must be updated. In particular, *pro forma* OATT Attachment M, as adopted by this final rule, requires transmission line ratings to be computed in accordance with a written transmission line rating methodology and consistent with good utility practice. Moreover, we note that Reliability Standard FAC–008–5 Requirement 3.2 requires transmission line rating methodologies to identify how ambient conditions are considered.[316] Thus, transmission line rating methodologies need to document methods used to calculate AARs.

133. In response to LADWP's argument that the Commission should align AAR requirements with the NERC Reliability Standards—and that the proposed 10-day threshold would conflict with the requirement specified in Reliability Standard MOD–001–1a that ATC be calculated hourly for the next 48 hours—we note that Reliability Standard MOD–001–1a requires that ATC be calculated for *at least* the next 48 hours, not for *only* the next 48 hours. Furthermore, the Commission's regulations require ATC to be calculated and/or posted for periods more than 48 hours in the future (*e.g.,* when transmission service is requested or inquired about).

134. Finally, in response to RTO/ISO requests for flexibility, we clarify the applicability of the 10-day threshold to RTOs/ISOs. The vast majority of energy transactions in RTOs/ISOs are executed and financially settled in the day-ahead and real-time energy markets; thus, we find that requiring AARs for the real-time and day-ahead energy markets in RTOs/ISOs is necessary to ensure the accuracy of transmission line ratings and just and reasonable wholesale rates. Because these transactions take place within a one-day forward timeframe, the 10-day threshold will provide very little additional benefits in existing RTO/ISO markets. Accordingly, the 10-day threshold will not apply to internal transactions or internal flows associated with through-and-out transactions in RTOs/ISOs. However, given that RTOs/ISOs generally use the *pro forma* OATT transmission service model for movement of electricity into/out of their service territories, the 10-day threshold requirement will apply to RTOs/ISOs' evaluation or determination of availability of transmission service at the seams of RTO/ISO service territories, in order to improve the accuracy of transmission line ratings and ensure just and reasonable wholesale rates.

b. Role of the Transmission Owner and Transmission Provider in AAR Implementation

i. NOPR Proposal

135. In proposing AAR implementation in the *pro forma* OATT, the Commission proposed for transmission providers—not transmission owners—to implement AARs because transmission providers—not transmission owners—must have an OATT.[317]

ii. Comments

136. Several commenters clarify that transmission owners, not transmission providers, calculate transmission line ratings.[318] For example, MISO states that its formational documents reflect, and have codified, the responsibility of transmission owners to calculate facility ratings, not MISO.[319] MISO Transmission Owners explain that Reliability Standard FAC–008–5 requires transmission owners to have ''a documented methodology for determining facility ratings of its solely and jointly owned Facilities'' based on the electrical characteristics of the transmission equipment or other industry standard.[320] Southern Company states that the MOD suite of NERC Reliability Standards governing TTC/ATC calculations requires transmission line ratings as provided by transmission owners.[321] Similarly, ISO–NE explains that its Transmission Operating Agreement requires its participating transmission owners to establish transmission line ratings for each transmission facility.[322] Additionally, NYISO states that in the New York Control Area, the transmission owners are responsible for developing transmission line ratings and providing the element ratings directly to NYISO. In turn, according to NYISO, NYISO determines the most limiting element, which sets the applicable facility rating.[323]

[311] Exelon Comments at 8; AEP Post-Technical Conference Comments at 2–3; *see also supra* Section IV.B.1.c.

[312] NERC Comments at 6–7.

[313] *Id.* at 7.

[314] NERC Comments at 6–7; BPA Comments at 2–4.

[315] NERC Comments at 6–7.

[316] Reliability Standard FAC–008–5, Requirement R3.2, p.4, *http://www.nerc.com/pa/Stand/Project%20201803%20Standards%20Efficiency%20Review%20Require/2018-03__FAC-008-5__clean__01192021.pdf.*

[317] NOPR, 173 FERC ¶ 61,165 at P 84.

[318] MISO Comments at 27; Vistra Comments at 3–4; TAPS Comments at 13–14; Southern Company Comments at 6; EEI Comments at 2–4; MISO Transmission Owners at 29; EEI Comments at 2–4.

[319] MISO Comments at 27.

[320] MISO Transmission Owners at 29.

[321] Southern Company Comments at 3, 6.

[322] ISO–NE Comments at 6.

[323] NYISO Comments at 3.

137. Because of these differing transmission owner and transmission provider roles and responsibilities, these commenters request that the Commission recognize and make these differing roles explicit in any final rule.[324] Some recommend further Commission action to ensure transmission owners have an obligation to implement the AAR requirements in proposed *pro forma* OATT Attachment M. For example, Vistra encourages the Commission to modify its regulations to create a compliance obligation for each transmission owner to provide RTOs/ISOs all information necessary to implement proposed *pro forma* OATT Attachment M.[325] Similarly, TAPS requests that the Commission clarify that: (1) RTOs/ISOs have the authority to require transmission owners to provide the information they will need to implement AARs; or (2) transmission owners within RTOs/ISOs must provide the information RTOs/ISOs will need to implement AARs to the relevant RTO/ISO.[326] Additionally, TAPS argues that in order to achieve efficient and consistent application of AARs, the Commission should direct RTOs/ISOs to use, or at minimum accommodate the use of, ''look-up tables.'' [327] TAPS explains that, using the ''look-up table'' approach will limit the obligation to continuously monitor weather reports to recalculate AARs and communicate those transmission line ratings to the RTO/ISO on an hourly basis.[328]

138. Noting the applicability of the *pro forma* OATT to transmission providers and that transmission owners and transmission providers are different in RTO/ISOs, Exelon comments on the phrasing ''is calculated'' in the AAR definition, explaining that, while it largely supports the proposed AAR definition, it does not ''calculate'' transmission line ratings hourly. Exelon states that it calculates 64 different transmission line rating cases (for nine temperatures sets, across normal, long-term emergency, short-term emergency, emergency load dump, and for both day and night), and then references the relevant existing calculations in a ''look-up table'' through its Inter-Control Center Communications Protocol signal. Exelon proposes to refine the AAR term to: ''a transmission line rating that reflects the appropriate temperature-adjusted rating for a facility based on an up-to-date forecast of ambient air temperatures across the time period to which the rating applies.'' [329]

139. Finally, CAISO argues that RTOs/ISOs and their stakeholders will have to answer many questions in developing tariff provisions for using hourly transmission line ratings. Several of these questions relate to AAR implementation timelines, including the time hourly transmission line ratings must be submitted by the transmission owners to RTOs/ISOs and the time period that transmission owners will have to update hourly transmission line ratings for use in real-time markets after day-ahead results are published.[330] As an example, BPA explains that its dynamically established TTC calculations are based on schedules submitted 20 minutes before the operating hour.[331]

iii. Commission Determination

140. We clarify that transmission owners, not transmission providers, are responsible for calculating transmission line ratings. This responsibility is codified in the NERC Reliability Standards, as well as in RTO/ISO foundational documents.[332] Nothing in this final rule changes that responsibility. In the non-RTO/ISO regions, this detail is generally not a concern because the transmission provider is usually the transmission owner. However, in the RTO/ISO regions, there is a distinction between transmission owners and transmission providers. Thus, in order to comply with this final rule, RTOs/ISOs—the transmission provider with the OATT on file—will need to rely on their member transmission owners to calculate transmission line ratings and provide them to the RTO/ISO.[333]

141. In response to concerns about the responsibility for calculating transmission line ratings in RTOs/ISOs, we clarify that we expect RTOs/ISOs to require their member transmission owners to make timely calculations and determinations as required for transmission line ratings, and to provide them to the RTO/ISO.[334] Where the transmission provider is not the transmission owner (*e.g.,* RTOs/ISOs), we require the transmission provider to explain in its compliance filing, as part of its implementation of the new *pro forma* OATT Attachment M, through what mechanism (tariff, membership agreement, etc.) the transmission owner(s) will have the obligation for making and communicating to the transmission provider the timely calculations and determinations related to transmission line ratings (including the exercise of any discretion in calculations or application of exceptions).

142. In response to Exelon's concerns about the proposed AAR definition,[335] we clarify that hourly (or more frequent) querying of ''look-up tables'' or similar pre-calculated AAR databases will satisfy the requirement that AARs be calculated at least each hour. While we expect transmission owners to calculate transmission line ratings, given the difference between transmission owners and transmission providers in RTOs/ISOs, we require RTOs/ISOs on compliance to propose and justify a

[324] MISO Comments at 27; Vistra Comments at 3–4; TAPS Comments at 13–14; Southern Company Comments at 6; EEI Comments at 2–4.

[325] Vistra Comments at 3–4.

[326] TAPS Comments at 14.

[327] *Id.* at 8. TAPS states that, for each of their transmission facilities, transmission owners should be required to provide RTOs/ISOs with a table showing their temperature-adjusted rating for a pre-established set of ambient air temperatures.

[328] *Id.* at 8–10.

[329] Exelon Comments at 11–12.

[330] CAISO Comments at 12–13.

[331] BPA Comments at 5.

[332] *See, e.g.,* Reliability Standards FAC–008–5, Requirement R3 and FAC–008–5, Requirement R6.

[333] We note that, as discussed below, in RTO/ISO regions, in addition to AARs, transmission owners will be required to calculate and provide other transmission line ratings to the RTO/ISO, including seasonal line ratings and emergency ratings. Moreover, in RTO/ISO regions, transmission owners will be required to provide to the RTO/ISO the list of transmission lines which have been exempted from the AAR requirement (under the ''Exceptions'' paragraph of *pro forma* OATT Attachment M) or temporary alternate ratings (under the ''System Reliability'' section of *pro forma* OATT Attachment M).

[334] *See, e.g.,* MISO, MISO Rate Schedules, MISO Transmission Owner Agreement, art. 4, § II.A Providing Information (30.0.0) (''Each Owner and User shall provide such information to [MISO] as is necessary for [MISO] to perform its obligations under this Agreement and the Tariff.''); SPP, Governing Documents Tariff, Membership Agreement, § 3.5 Providing Information (0.0.0) (''Member shall provide such information to SPP as is necessary for SPP to perform its obligations under this Agreement and the OATT, and for planning and operational purposes.''); PJM, Rate Schedules, § 4.11 Transmission Facility Ratings (0.0.0) (''All Parties shall regularly update and verify Transmission Facility ratings, subject to review and approval by PJM, in accordance with the following procedures and the procedures in the PJM Manuals . . . .''); ISO–NE, ISO New England Inc. Agreements and Contracts, Transmission Operating Agreement, §§ 3.02(a)(ii) (5.0.0) (stating that ISO–NE shall ''determine Operating Limits based on forecasted or real-time system conditions and in accordance with the facility ratings established by the PTOs in collaboration with the ISO pursuant to Section 3.06''), 3.06(a)(v) (5.0.0) (stating that the transmission owner shall: ''(v) Collaborate with the ISO with respect to: (A) The development of Rating Procedures, (B) the establishment of ratings for each PTO's New Transmission Facilities; (C) the establishment of ratings for each PTO's Acquired Transmission Facilities that do not have an existing rating as of the Operations Date, and (D) the establishment of any changes to existing ratings for Transmission Facilities in effect as of the Operations Date''); CAISO, CAISO eTariff, Transmission Control Agreement, § 4.2 (0.0.0) (stating that facility ratings are required CAISO's database of all facilities under the CAISO's control and that transmission owners are responsible for providing updates to that database when there is a change in ratings, which CAISO reviews).

[335] Exelon Comments at 11–12.

methodology for AAR implementation, delineating the expected roles between transmission owners and transmission provider. In doing so, we encourage RTO/ISO transmission owners to coordinate implementation methodologies and promote implementation consistency to the greatest extent possible within an RTO/ISO service territory. However, in response to comments from TAPS that the Commission should require use of a ''look-up table'' approach, or at least require that approach be an option,[336] we decline to require a specific AAR implementation methodology, noting regional software and procedural differences.

143. In response to requests for clarification from CAISO, we decline to require in this final rule a specific timeline by which AARs will need to be calculated or submitted to the transmission provider (either in the context of the day-ahead and real-time markets in RTOs/ISOs, or in terms of how far in advance of an operating hour an AAR should be calculated in a bilateral market).[337] However, we note that the AAR definition we adopt in this final rule requires that AARs ''[r]eflect[] an *up-to-date* [emphasis added] forecast of ambient air temperature across the time period to which the rating applies,'' by which we mean that new forecast data should be incorporated into AAR calculations as close to real time as reasonably possible given the timelines needed to obtain forecast data and perform the AAR calculation, as well as any other steps needed for validation, communication, or implementation of AARs.[338] Furthermore, transmission providers must explain their timelines as part of their compliance filings. We recognize that transmission providers already manage similar timing issues with respect to load forecasts, forecasts for renewable energy production, and generation bid deadlines, and it may be that deadlines for AAR calculation/submission are not significantly different from existing deadlines for submission of updates to generation supply offers and load.

c. Solar Heating in AAR Calculations

i. NOPR Proposal

144. In the NOPR, the Commission proposed to require AARs that reflect up-to-date forecasts of ambient air temperature, but noted that AARs could possibly incorporate other forecasted inputs.[339] As an example of other inputs, the Commission pointed to PJM's implementation of ''day and night ambient air temperature tables, where the night ambient air temperature table assumes zero solar irradiance.'' [340] The Commission also sought comment on whether to require transmission providers to implement DLRs, rather than only AARs, noting that DLRs can incorporate solar heating intensity, among other ambient conditions, to calculate the amount of transfer capability of a given transmission line in near real time.[341]

ii. Comments

145. Several commenters discuss the incorporation of solar heating into transmission line ratings. For example, Vistra suggests that, instead of requiring full DLRs, the Commission instead adopt a ''middle ground'' of requiring AARs that incorporate consideration of predictable solar heating (at least considering daytime/nighttime hours, similar to PJM's existing implementation of AARs).[342] Potomac Economics and Vistra contend that such a requirement would not necessitate sophisticated monitoring or forecasting, and instead would produce significant benefits with minimal cost.[343] R Street Institute, PG&E, Indicated PJM Transmission Owners, Dominion, and Potomac Economics also support incorporating predictable daytime/nighttime solar heating into AARs, with Dominion and Indicated PJM Transmission Owners noting that this is already the practice in PJM.[344] Entergy, without taking a position on whether it would be appropriate for the Commission to require separately calculated daytime and nighttime ratings, states that the shade of night provides an additional 5% to the transmission line's transmission line ratings.[345] PG&E states that it supports separately calculated daytime and nighttime ratings and indicates that its research from PJM's posted transmission line ratings shows that at least 14% of PJM's transmission line ratings would increase by 10% by considering solar heating.[346] Potomac Economics estimates that considering daytime/nighttime could increase thermal transmission line ratings on average by 11% during nighttime hours and the potential benefits would be approximately $30 million per year in MISO alone.[347]

146. Vistra points out that solar heating varies in several ways: Between daytime and nighttime (with sunrise/sunset times and day length varying significantly across the year), across the hours during the day (varying—under worst-case, clear-sky assumptions—from close to zero just after and before sunrise and sunset, respectively, to a daily mid-day peak), and across the days of the year (with higher mid-day peaks in the summer and lower peaks in the winter).[348] Vistra and PG&E both suggest that the Commission consider requiring regular updates to sunrise/sunset times, with Vistra discussing possible daily or seasonal updates, and PG&E discussing possible monthly updates.[349] Furthermore, while Vistra recommends that the Commission at the very least require separate daytime and nighttime AARs, Vistra also provides data for how solar heating varies significantly across the day, and discusses how more granular solar forecasting might reflect these solar variations.[350]

iii. Commission Determination

147. Upon consideration of the comments received in response to the NOPR, we require transmission providers to incorporate solar heating into AARs by implementing separate AARs for daytime and nighttime periods. Specifically, we require transmission providers to reflect the lack of solar heating in the technical assumptions for nighttime AARs. As noted by Dominion and Indicated PJM Transmission Owners, incorporating solar heating into AARs is consistent with PJM's existing AAR implementation.[351] Absent this requirement for daytime/nighttime

[336] TAPS Comments at 7–10.

[337] We note that in some instances RTOs/ISOs may propose (as we understand PJM does now for its AARs) to have the RTO/ISO select AARs based on temperature forecasts and pre-calculated AAR tables/databases. In such cases, it may not be (as CAISO's comments suggest) that transmission owners will be sending entire sets of AARs to RTOs/ISOs every time they are calculated.

[338] *Pro Forma* OATT attach. M, AAR Definition.

[339] NOPR, 173 FERC ¶ 61,165 at P 23.

[340] *Id.* P 23 n.40; *see also id.* P 21 (explaining that different types of ambient weather assumptions can be incorporated into transmission line ratings, including updated air temperature, solar irradiance, and wind speed, among others).

[341] *Id.* PP 25–26, 43.

[342] Vistra Comments at 4–5.

[343] *Id.* at 4–5; Potomac Economics Comments at 14–15.

[344] R Street Institute Comments at 3; PG&E Comments at 11–12; Indicated PJM Transmission Owner Comments at 8–9; Dominion Comments at 8; Potomac Economics Comments at 14–15.

[345] Entergy Comments at 8.

[346] PG&E Comments at 11.

[347] Potomac Economics Comments at 14–15.

[348] Vistra Comments at 4–6; *see also* PG&E Comments at 11–12.

[349] Vistra Comments at 5; PG&E Comments at 12.

[350] Vistra Comments at 4–5.

[351] Dominion Comments at 7–8; Indicated PJM Transmission Owners Comments at 7.

AARs, AARs would assume the worst-case solar heating assumptions in every hour, even at night when there is no solar heating of transmission lines at all.

148. The consideration of daytime/nighttime solar heating in the AARs used by transmission providers will further the Commission's goal of ensuring more accurate transmission line ratings, which result in just and reasonable wholesale rates. Furthermore, as commenters note, the improvements to the accuracy of transmission line ratings that will result from adopting a daytime/nighttime AAR requirement can yield significant economic benefits at minimal cost.[352]

149. We agree with commenters that sunrise/sunset times should be updated periodically to ensure the accuracy of both daytime and nighttime ratings. Specifically, we clarify that in order to comply with the requirement in *pro forma* OATT Attachment M for AARs to reflect the absence of solar heating during nighttime periods, transmission providers must update the sunrise and sunset times used to calculate their AARs at least monthly, if not more frequently. We find that among the daily, monthly, and seasonal timeframes suggested by commenters, the requirement to update sunrise/sunset times on a monthly basis strikes an appropriate balance between achieving the greatest benefits of AAR implementation and not imposing an unreasonable burden on transmission providers. Given the speed at which sunrise and sunset times change in many areas of the country during certain times of the year, monthly updates will result in significantly more accuracy in transmission line ratings and capture significantly greater value than seasonal updates. Because sunrise/sunset times can be easily calculated with precision based on location and day of the year,[353] and because we expect AAR implementation to be largely automated, we do not expect monthly updates to sunrise/sunset times to impose a significant additional implementation burden relative to seasonal updates. Nothing in this final rule would prevent a transmission provider from updating its sunrise/sunset times more frequently than monthly and we encourage transmission providers to do so.[354]

150. Vistra correctly points out that, in addition to sunrise/sunset times, solar heating also varies across the days of the year and the hours of the day. However, again, to maintain a balance of benefits and burdens, we decline to require regular updates to mid-day peak solar heating to account for differences across days of the year. As such, transmission providers may use maximum annual assumptions for solar heating when determining daytime AARs. Furthermore, to balance benefits and burdens, we decline to require more granularity (*e.g.,* hourly forecasts) in solar heating assumptions and only require daytime/nighttime consideration. We note, however, that nothing in this final rule would prohibit a transmission provider that wants to voluntarily implement regular updates to peak mid-day solar heating, or to voluntarily implement hourly forecasts for solar heating, from doing so. We further note that peak or hourly daytime solar heating (under worst-case clear-sky assumptions) can be accurately computed based on location using equations such as those presented in IEEE (Institute of Electrical and Electronics Engineers) Standard 738.[355]

3. Other AAR Implementation Issues

a. Reliability Unit Commitment Processes

i. NOPR Proposal

151. In the NOPR, the Commission proposed that RTOs/ISOs comply with the AAR requirements by revising their OATTs to implement AARs within their SCED and SCUC models (and in any relevant related models) in both the day-ahead and real-time markets and in any intra-day RUC processes.[356]

ii. Comments

152. CAISO requests clarification on whether hourly transmission line ratings should be constant in RUC processes.[357]

iii. Commission Determination

153. In response to CAISO, we clarify that transmission providers should propose on compliance to use updated AARs as part of any market process associated with the day-ahead and real-time markets (including RUC, as well as any look-ahead commitment processes or other such processes). In the event an RTO/ISO believes that AARs should not be used as part of any market process associated with the day-ahead and real-time markets (or that updated AARs should not be required for any market process), it should propose and justify such deviations on compliance.

b. Time Resolution and Calculation Frequency of AAR Requirements

i. NOPR Proposal

154. In defining AARs, the Commission proposed to require that AARs be calculated at least each hour, if not more frequently, and for AARs to apply to a time period of not greater than one hour.[358]

ii. Comments

155. Many state agencies, supply and load representatives, renewable energy advocates, and independent experts support the proposed AAR requirements overall, which includes the proposed time resolution or calculation frequency.[359] RTOs/ISOs are mixed in whether they take a position and generally discuss their ability to accept AARs calculated hourly. For example, while not taking a position on the appropriateness of this part of the NOPR proposal, MISO explains that its EMS and SCED are capable of receiving and leveraging AARs provided by their transmission owners at least hourly.[360]

156. CAISO explains that its transmission owners can submit AARs, but that the fundamental challenge with using AARs is timely communication of forecasted transmission line ratings. According to CAISO, participating transmission owners currently submit AARs as an equipment rating change through CAISO's outage management system (webOMS).[361] CAISO further states that using hourly adjusted transmission line ratings for transmission lines across the 24-hour horizon of a trading day will necessarily and significantly increase the complexity of CAISO's day-ahead optimization processes.[362] In addition, CAISO contends that hourly transmission line ratings in real-time markets may drive uplift costs by causing variances between total transfer

[352] Vistra Comments at 4–5; Potomac Economics Comments at 14–15.

[353] *See, e.g.,* National Oceanic and Atmospheric Administration, Global Monitoring Division, *General Solar Position Calculations, https://gml.noaa.gov/grad/solcalc/solareqns.PDF* (providing formulas for calculating sunrise/sunset times based on latitude, longitude, and day of the year).

[354] We note that PJM currently updates its sunrise/sunset times more frequently than monthly in its day/night AAR implementation.

[355] Institute of Electrical and Electronics Engineers, IEEE Standard for Calculating the Current-Temperature Relationship of Bare Overhead Conductors 18–20, IEEE Std 738–2012 Cor 1–2013 (2013) (IEEE 738).

[356] NOPR, 173 FERC ¶ 61,165 at P 91.

[357] CAISO Comments at 12–13.

[358] NOPR, 173 FERC ¶ 61,165 at P 95.

[359] EPSA Comments at 2; Clean Energy Parties Comments at 2–3; R Street Institute Comments at 2–3; TAPS Comments at 1–3; ACORE Comments at 3; ACPA/SEIA Comments at 7; OMS Comments at 2; New England State Agencies Comments at 10; Vistra Comments at 2–3.

[360] MISO Comments at 12.

[361] CAISO Comments at 4.

[362] *Id.* at 9–10.

capability used in each of CAISO's commitment and dispatch processes. In addition, CAISO asserts that transmission line rating changes over the market run's look-ahead period can generate inefficient outcomes through deviations from day-ahead schedules.[363]

157. Similarly, NYISO cautions against requiring hourly updates to transmission line ratings if they are not already used by RTOs/ISOs.[364] NYISO explains that introducing hourly transmission line ratings could result in divergences from the day-ahead schedule, creating uplift or potential reliability risks, if hourly transmission line ratings cause a transmission line rating to decline.[365] On hourly updates to AARs, NYISO notes that its market software looks ahead, including a 24-hour day-ahead optimization and multi-period commitment for the real-time market.[366] NYTOs note that NYISO and NYTOs can apply AARs and DLRs to congested transmission lines currently in real time to increase transmission line ratings.[367]

158. ISO–NE states that it allows for short-term changes to transmission line ratings, though not at an hourly level.[368] ISO–NE further states that its coordinated transaction scheduling with NYISO runs every 15 minutes and therefore a shorter interval would have to be considered.[369]

159. While PJM supports the adoption of AARs, it opposes the requirements that a transmission line rating apply to a period not greater than one hour and that transmission line ratings be updated hourly. PJM states that the key factor for determining the transmission line rating is the temperature and, as a result, the primary event that triggers a change in AARs is the ambient air temperature. PJM states that, in implementing AARs, it continuously monitors temperatures and updates transmission line ratings for temperature fluctuations in accordance with the transmission owners' look-up table, so there is no benefit to updating the AARs hourly if no temperature change has occurred.[370] Relatedly, PJM and Duke Energy state that the proposed requirements in the NOPR that transmission line ratings be updated hourly could harm operations.[371] This is because, according to PJM, a significant temperature change could occur between required hourly updates and, if a transmission operator is not continuously monitoring ambient air temperature, an incorrect transmission line rating would be effective from the time of the temperature change until the next mandated hourly update.[372] PJM states that these temporal requirements simply add an administrative burden without providing additional benefits.[373] PJM requests that the Commission refrain from requiring transmission providers to apply AARs in hourly intervals but rather require them to be continuously monitored with changes triggered by temperature changes and the other relevant factors in the look-up tables.[374]

160. Many transmission owners also request flexibility on the proposed requirement for AARs to be calculated ''at least each hour.'' [375] ITC asks that the Commission instead only require daily AAR updates and notes that this is the prevailing practice for transmission owners using AARs in MISO.[376] MISO Transmission Owners also request flexibility to implement daily rather than hourly AARs.[377] Indicated PJM Transmission Owners argue against requiring hourly AAR calculations.[378] Indicated PJM Transmission Owners explain that PJM adjusts transmission line ratings over the day as temperatures change, but state that there is little benefit to hourly verification of temperature changes because transmission line ratings in PJM do not typically change hourly. Similarly, EEI argues for a requirement for daily AAR updates for real-time operations.[379]

161. In contrast, Entergy explains that it automatically updates AARs every hour for the approximately 1,000 facilities for which it calculates AARs, and this information is automatically updated hourly in Entergy's Real Time Contingency Analysis so the operator does not have to look at charts.[380] Exelon also contends that an hourly transmission line ratings check would not be overly burdensome and instead could help to prevent overloading a transmission line.[381] Exelon also urges the Commission to provide sufficient flexibility to ensure transmission line ratings can change intra-hourly.[382] Moreover, Exelon comments that it believes that the Commission's proposed requirements are sufficiently flexible to accommodate PJM's current approach.[383]

iii. Commission Determination

162. We adopt the Commission's proposal in the NOPR to require the calculation of AARs ''at least each hour, if not more frequently'' and the requirement that AARs ''appl[y] to a time period of not greater than one hour.'' [384]

163. With respect to calculation frequency, we believe that performing AAR calculations at least hourly appropriately balances requiring updates at a frequency that captures meaningful changes in ambient air temperature forecasts, and not overburdening transmission providers. In response to concerns that the requirement for hourly calculations may be unduly burdensome because temperature forecasts do not always fluctuate hour by hour, we recognize that in some hours forecasts for temperatures do not change, primarily because weather services do not always have updated forecasted values for every location each hour. However, it is not known exactly when such forecasted values will be updated, and, therefore, our requirement to calculate AARs hourly appropriately requires transmission providers to check for forecast updates and apply any updates that are available. We believe that the requirement to calculate AARs hourly ensures that any such publication of forecast updates are incorporated into AARs in a reasonable timeframe.[385] If we were to instead require such calculations on a longer time period (*e.g.,* every eight hours), then there would be some instances when published available weather forecast updates would not be incorporated into AARs in time to accurately reflect the transmission line's true transfer capability. Moreover, we expect this process for AAR implementation to be largely automated, with computer systems querying or receiving updated forecasts and processing any such data

[363] *Id.* at 10–11.

[364] NYISO Comments at 4.

[365] *Id.* at 4–5.

[366] *Id.* at 13.

[367] NYTOs Comments at 4.

[368] ISO–NE Comments at 6–7.

[369] *Id.* at 9.

[370] PJM Comments at 4–5.

[371] *Id.* at 5; Duke Energy Comments at 8.

[372] PJM Comments at 5.

[373] *Id.* at 2 n.5.

[374] *Id.* at 6.

[375] ITC Comments at 9; MISO Transmission Owners Comments at 24; EEI Comments at 12; Duke Energy Comments at 10.

[376] ITC Comments at 9.

[377] MISO Transmission Owners Comments at 24.

[378] AEP Comments at 6–7; Dominion Comments at 3; Indicated PJM Transmission Owners Comments at 7–9.

[379] EEI Comments at 12; PacifiCorp Comments at 2; BPA Comments at 3; WAPA Comments at 6–7.

[380] Entergy Comments at 3.

[381] Exelon Comments at 9–10.

[382] *Id.*

[383] *Id.* at 9.

[384] NOPR, 173 FERC ¶ 61,165 at P 3 n.3.

[385] For example, we understand that the NBM forecast (which is a blend of distinct constituent forecasts) has updates published at least every hour, but the constituent forecasts are typically updated only three times per day. Exactly when the constituent forecasts will be updated is not precise, such that an update to any forecasted value might change in any hour.

into updated AARs, such that calculating AARs hourly should not be significantly more burdensome than calculating AARs daily. We agree with Exelon that AAR calculations at least hourly are likely to be an important tool used to prevent any transmission overload that might occur as a result of a sudden, unexpected temperature increase.[386] We add that this requirement does not preclude intra-hour updates.

164. We acknowledge, in response to comments by CAISO and NYISO, that within RTOs/ISOs there will be times when AARs produce real-time transmission line ratings that diverge from what was previously calculated in the day-ahead market (based on earlier forecasts), and that this may result in operating considerations and uplift costs. However, we are not persuaded that such considerations or costs outweigh the benefits of updating real-time transmission line ratings discussed above. Further, updating transmission line ratings closer to real time will help ensure that the most accurate transmission line ratings are used in the real-time energy market and, in turn, tend to reduce costs and promote reliable operations. Commenters seem to argue that if the weather conditions unexpectedly change, such that temperatures are significantly lower and significantly more transfer capability is able to be used in real time compared to day ahead, the markets should keep such transfer capability in reserve in order to minimize uplift. We disagree that a concern about potential uplift should result in transfer capability being withheld from the real-time energy market with associated limits on the economic benefits of using AARs. Further, we do not believe that any operating considerations associated with updating transmission line ratings in real time will compromise reliable operations. As PJM states, AARs are already employed in PJM in both the day-ahead and real-time markets and, in its experience, AARs increase operational flexibility, promote a more efficient use of the transmission system, and result in more reliable system dispatch and cost-effective market operations.[387]

165. One of the reasons that substantial uplift is sometimes considered problematic is that it may be evidence that the market is not accurately considering operating constraints, which gives rise to out-of-market actions and distorts short-term and long-term price signals.[388] While we acknowledge the potential for uplift in certain situations, the reason for incurring uplift here is very different. Updating transmission line ratings in real time will result in more accurate prices that reflect actual real-time operating constraints. Accordingly, the potential for the generation of uplift through our AAR requirements would not be evidence of market design concerns or inaccurate price signals.

166. As discussed above, we believe that, under the AAR requirements adopted in this final rule, transmission providers will implement AARs with sufficient forecast margins in forward periods such that instances of reductions in transfer capability in real time and the related operational challenges will be infrequent. Accordingly, we anticipate that transfer capability will typically be freed up as forecasts become more certain (and require smaller forecast margins) from forward periods to actual operation, which will typically result in additional transmission being made available as we approach real time, and this will create some uplift. But we find this is the result of the policies that are needed to ensure transmission line ratings are sufficiently accurate to produce just and reasonable wholesale rates, and that any resulting uplift is, therefore, appropriate. Additionally, however, we acknowledge that transmission providers might also implement unreasonably high ambient air temperature forecast margins. In such instances, such unreasonably high forecast margins would need to be adjusted to ensure transmission line ratings are accurate.

167. We clarify that this final rule does not prohibit transmission providers from utilizing AARs that are calculated on a more frequent basis than hourly. Relatedly, in response to comments from PJM, we clarify that nothing in this final rule prevents a transmission provider from utilizing a transmission line rating calculated in between whatever standard AAR calculation period is established.

168. Turning to the hourly resolution (as opposed to the hourly frequency of calculation) of AARs, we adopt the NOPR proposal to require that AARs ''appl[y] to a time period of not greater than one hour'' because we find such a policy strikes an appropriate balance between providing sufficient granularity to transmission line ratings to reflect meaningful predictable changes in ambient air temperature across each day, and not overburdening transmission providers.[389] These changes are different from changes in ambient air temperatures discussed above, which are changes in forecasts due to improved information as a time period moves closer to real time as time advances.

169. We find that ambient air temperatures typically vary sufficiently across the day to produce meaningful differences in hourly transmission line ratings. For example, we expect temperatures during morning or evening hours to typically be significantly different than the noon temperature. Recognizing such temperature differences through transmission line ratings may be particularly important, since increasingly systems are being challenged during such morning or evening hours due to ramp or peak net load challenges. We find that hourly AAR calculations will create important additional operational flexibility for operators and more accurate transmission line ratings. And because we expect the AAR process to be largely automated, we do not believe that the requirement for hourly AARs will be significantly more burdensome than a less granular requirement (*e.g.,* a requirement that AARs apply to a time period of not greater than one day). In any event, we clarify that this final rule does not preclude a transmission provider from implementing AARs on a more granular basis than hourly, such as the 15-minute basis suggested by ISO–NE with respect to its coordinated transaction scheduling.

c. AAR Coordination

i. Comments

170. Several commenters argue that further consideration is needed on AAR implementation in certain circumstances.[390] For example, while not supporting or opposing an AAR mandate, NERC stresses the importance of reliability, explaining that reliability of the transmission system depends upon the proper coordination of transmission line ratings,[391] and states that special attention must be paid to reliability considerations in the implementation of any reforms in this proceeding.[392] Specifically, NERC notes that the Commission should consider whether to require transmission

[386] Exelon Comments at 9–10.

[387] PJM Comments at 2.

[388] *Uplift Cost Allocation and Transparency in Mkts. Operated by Reg'l Transmission Orgs. and Indep. Sys. Operators,* Order No. 844, 83 FR 18134 (Apr. 25, 2018), 163 FERC ¶ 61,041, at P 3 (2018).

[389] *Pro Forma* OATT attach. M, AAR Definition.

[390] NERC Comments at 6–7; EEI Comments at 14–15; NYTOs Comments at 7; CAISO Comments at 12–13.

[391] NERC Comments at 4.

[392] *Id.*

providers to coordinate AAR implementation methods since temperature readings and methodologies may differ on tie lines, and which transmission line rating should be used in the event of a disagreement among entities receiving transmission line ratings or methodologies.[393]

171. EEI asserts that the NOPR proposal was unclear about how AARs on transmission lines across seams should be determined, where transmission line ratings could be subject to assumptions from two different transmission providers, and how AAR compliance could be determined for non-jurisdictional transmission facilities. EEI urges flexibility on seams issues and for the Commission to enforce reciprocity conditions for non-jurisdictional entities, should the Commission require targeted AAR implementation.[394] IID also encourages the Commission to consider seams issues that may need to be addressed if AARs are different among neighboring utilities.[395] MISO Transmission Owners similarly state that ATC calculations on joint flowgates and tie lines between RTOs/ISOs will require coordination among all parties each time a transmission line rating changes, increasing the level of communication necessary. According to MISO Transmission Owners, along these joint flowgates and tie lines, transmission owners and RTOs/ISOs will need to decide which forecast will govern and whether to use multiple weather forecasts.[396]

ii. Commission Determination

172. We agree with NERC's comments stressing the importance of reliability and reiterate that system safety and reliability are paramount to the requirements for transmission line ratings that we adopt in this final rule. We agree with NERC and other commenters that implementation of AAR requirements on tie lines may necessitate increased communication among neighboring transmission providers and relevant transmission owners. While we expect that parties will work collaboratively to ensure that appropriate ratings are determined for each tie line, we decline to adopt specific requirements for coordinating AAR implementation across transmission provider seams. Parties along these seams have a long history of working collaboratively to ensure the reliable implementation of transmission facility ratings and we are not persuaded that specific requirements for coordination are required at this time. Moreover, we note that, in the event of a disagreement over the appropriate facility rating, the NERC Reliability Standards already establish a framework for how entities should proceed, *i.e.,* that the system should be operated to the most limiting parameter.[397] However, as described further in Section IV.G.3.b, to ensure that transmission providers have adequate transparency into the transmission line ratings methodologies of their neighbors, we require transmission providers to share transmission line ratings and transmission line rating methodologies with other transmission providers, upon request.

173. In response to EEI and NERC, we further clarify that, to the extent there is a disagreement among entities about the calculated AAR, transmission providers should use the most limiting AAR in order to ensure reliability and that thermal limits are respected. As IID suggests, however, if the most limiting AAR along a mutual seam is based on one transmission provider's ambient air temperature assumptions that are more risk averse than another transmission provider's ambient air temperature assumptions, the inevitable result will be increased congestion between control areas. While using the more risk averse transmission line rating may result in an increase in congestion relative to the alternative of using a lower forecasted ambient air temperature, we do not, in this final rule, revise each transmission provider's authority to set the transmission line ratings within its control area.

174. In response to EEI's request for clarification on the applicability of the AAR requirements to non-jurisdictional entities, we note that the Commission's *pro forma* OATT requirements apply only to Commission-jurisdictional transmission providers. However, to the extent non-jurisdictional entities have reciprocity tariffs on file with the Commission, such reciprocity tariffs will need to implement *pro forma* OATT Attachment M adopted herein in order to satisfy the Commission's comparability (non-discrimination) standards established in Order No. 888.

d. Applicability of AARs to Transmission Loading Relief (TLR) Events

i. NOPR Proposal

175. In the NOPR, the Commission proposed to require transmission providers to use AARs as the relevant transmission line rating when determining whether to curtail or interrupt point-to-point transmission service (under section 14.7 of the *pro forma* OATT) if such curtailment or interruption is necessary because of a reduction in transfer capability anticipated to occur (start and end) within the next 10 days. The Commission also proposed to require transmission providers to use AARs as the relevant transmission line rating when determining whether to curtail network transmission service or secondary service (under section 33 of the *pro forma* OATT) or redispatch network transmission service or secondary service (under sections 30.5 and/or 33 of the *pro forma* OATT), if such curtailment or redispatch is both necessary because of issues related to flow limits on transmission lines and anticipated to occur (start and end) within 10 days of such determination.[398]

ii. Comments

176. MISO states that the Commission should clarify that use of AARs in congestion management should not discriminate based on the type of flows being curtailed, be it transmission service or market flow, as some processes, such as the interregional TLR process, differentiate between the types of flow.[399]

iii. Commission Determination

177. We clarify that AARs should not discriminate based on the type of flows being curtailed, interrupted, or redispatched. Accordingly, we modify certain aspects of *pro forma* OATT Attachment M, as proposed in the NOPR, to clarify that AARs must be used as the relevant transmission line rating when determining whether to initiate TLR procedures anticipated to occur (start and end) within the next 10 days. We note that TLR procedures occur pursuant to the curtailment, interruption, and/or redispatch procedures outlined in *pro forma* OATT sections 13.6, 14.7, 30.5, and/or 33, which are also referenced in *pro forma* OATT Attachment M, as proposed in the NOPR, as requiring the use of AARs as the relevant transmission line rating.

[393] *Id.* at 6–7.

[394] EEI Comments at 14–15.

[395] IID Comments at 6–7.

[396] MISO Transmission Owners Comments at 32–33.

[397] Reliability Standard TOP–001–5, Requirement R 18, p. 7, *https://www.nerc.com/pa/Stand/Reliability%20Standards/TOP-001-5.pdf.*

[398] NOPR, 173 FERC ¶ 61,165 at PP 87, 89, 90.

[399] MISO Comments at 8.

In these instances, we find that proposed *pro forma* OATT Attachment M is already sufficiently clear: AARs must be used as the relevant transmission line rating when determining whether to initiate TLR procedures anticipated to occur (start and end) within the next 10 days. However, because *pro forma* OATT Attachment M, as proposed in the NOPR, only referenced curtailment and interruption procedures that occur pursuant to *pro forma* OATT section 14.7, for clarity, we modify the proposed *pro forma* OATT Attachment M to also reference curtailment and interruption procedures that occur pursuant to *pro forma* OATT section 13.6.

e. Communication and Verification of AARs

i. Comments

178. With regard to the Commission's NOPR proposal that AAR data be submitted by the transmission owner to the RTO/ISO through Supervisory Control and Data Acquisition (SCADA) or related systems, MISO states that it strongly urges the Commission not to require any specific data communication medium due to rapid and frequent changes in technology. MISO emphasizes that the scale and scope of AARs as proposed in the NOPR would require electronic and programmatic updates to the RTO/ISO, and using manual communication methods, such as phone calls or written messaging, would not be practical. MISO adds that the requirements to coordinate data interchange for reliability are currently regulated by the NERC Reliability Standards.[400] CAISO states that a fundamental challenge will be to ensure entities can transmit forecasted AARs in a timely manner.[401] As a result of this challenge, CAISO requests clarification on what to do in cases of communication failure between the transmission owner and the RTO's/ISO's EMS and what an RTO/ISO should do if a transmission owner submits an incorrect transmission line rating.[402] NYISO clarifies that it receives updates of transmission line ratings from asset owners via the Inter-Control Center Communication Protocol.[403] NYTOs explain that, since AARs and DLRs are constantly changing, independent software validation solutions will be needed to avoid violating NERC Reliability Standard FAC–008, which would occur when there is any accidental discrepancy between a calculated transmission line rating and the transmission line rating methodology.[404]

ii. Commission Determination

179. In response to comments requesting that the Commission not dictate communication mediums for transmission owners submitting AARs to RTOs/ISOs, we clarify that this final rule requires that electronic transmission line rating data be submitted by transmission owners directly into an RTO's/ISO's EMS through SCADA *or similar communication systems.* We clarify that other electronic systems, such as Inter-Control Center Communication Protocol, can be used to comply with this requirement, and RTOs/ISOs may propose to use such systems on compliance.

180. In response to concerns about potential scarcity of temperature data and/or AAR communication failures, we modify the NOPR proposal to require that, if an AAR otherwise required to be used under *pro forma* OATT Attachment M is unavailable, the transmission provider must use the relevant seasonal line rating as the appropriate transmission line rating. This requirement does not relieve any transmission provider of the obligation in the first instance to provide an AAR but provides an alternate only if an AAR otherwise required under *pro forma* OATT Attachment M is not available. Further, while this provision establishes the seasonal line rating as the default recourse rating, the transmission provider retains the ability under the ''System Reliability'' section of *pro forma* OATT Attachment M to use a different recourse rating where the transmission provider reasonably determines such a rating is necessary to ensure the safety and reliability of the transmission system.

181. In response to NYTOs' comments that changing transmission line ratings will necessitate additional transmission line rating validation tools, we reiterate that the definitions of Transmission Line Rating, AARs, and Seasonal Line Rating we adopt in this final rule—as set forth in *pro forma* OATT Attachment M—require computation of transmission line ratings in accordance with good utility practice, including up-to-date forecasts, to ensure the accuracy of the relevant transmission line rating.[405] And as NYTOs note, inaccurate transmission line ratings or a discrepancy between transmission line ratings and the transmission line rating methodology could trigger a violation of NERC Reliability Standard FAC–008 by the relevant transmission owner. In other words, *pro forma* OATT Attachment M imposes an affirmative obligation on transmission providers to implement accurate transmission line ratings and the NERC Reliability Standards similarly require accuracy in transmission line ratings by the transmission owners that calculate such ratings. In RTOs/ISOs, where the transmission provider (*i.e.,* the RTO/ISO) must rely on its transmission owners to calculate and provide the required transmission line ratings, we acknowledge that there might be some increased complexity in ensuring the accuracy of the transmission line ratings. However, we do not prescribe the method for a transmission provider—including an RTO/ISO—to screen for issues with transmission line ratings,[406] instead leaving it up to the transmission provider to develop a general validation system that ensures its compliance with the requirements of this final rule and relevant NERC Reliability Standards. We agree with MISO that it is unable—and indeed is not required—to audit transmission line ratings;[407] rather, the type of validation that we reference here would be akin to the automated validation referenced by CAISO, SPP, and PJM,[408] where the RTO/ISO runs checks for obvious signs of data errors or corruption.

182. In response to CAISO's request for clarification on what an RTO/ISO should do if a transmission owner submits an incorrect transmission line rating, we do not require RTOs/ISOs to audit or recalculate transmission line ratings submitted to them (except in instances where their procedures provide for them to calculate

[400] MISO Comments at 15–16.

[401] CAISO Comments at 4–5.

[402] *Id.* at 12–13.

[403] NYISO Comments at 4.

[404] NYTOs Comments at 7.

[405] *Pro Forma* OATT attach. M, AAR Definition.

[406] For example, a transmission provider might consider screening for such issues as: Missing data; significant changes in transmission line ratings; illogical data (such as ratings that increase with increasing temperature, or daytime ratings that are higher than nighttime ratings); and transmission line ratings outside feasible ranges for particular transmission lines.

[407] MISO Comments at 27.

[408] PJM Comments at 8; CAISO Comments at 13; SPP Comments at 5–6. We note that, according to the MISO Transmission Owners' Agreement (TOA), MISO also has a responsibility to verify transmission line ratings. MISO, Open Access Transmission, Energy and Operating Reserve Markets Tariff, Rate Schedule 1, Appendix B, Section V (30.0.0) (''Each Owner shall file with MISO information regarding the physical ratings of all of its equipment in the Transmission System. This information is intended to reflect the normal and emergency ratings routinely used in regional load flow and stability analyses. In carrying out its responsibilities, MISO shall apply ratings that have been provided by the respective Owners and have been verified and accepted as appropriate by MISO where such ratings affect MISO reliability.'').

transmission line ratings, such as for RTOs/ISOs that calculate AARs from tables or databases). To the extent any transmission provider becomes aware of an apparent inaccurate transmission line rating, the transmission provider is expected to inform the transmission owner immediately and both the transmission provider and transmission owner should take appropriate action to correct any inaccuracy. If the transmission provider and transmission owner are unable to resolve the inaccuracy of a submitted AAR, then, as discussed above, the transmission provider must use an appropriate recourse rating until the AAR inaccuracy is resolved. To the extent the transmission provider and/or transmission owner is out of compliance with any applicable requirements, they should report such noncompliance as dictated by the applicable requirement.

f. Minimum AAR Temperature Range and AAR Granularity

i. Comments

183. Vistra contends that the Commission should provide guidance on the range and granularity of temperatures to be used in AARs.[409] Vistra argues that the Commission's AAR policy will be undermined if implementation decisions reintroduce unnecessary conservativism (such as only altering AARs for every 20 degrees Fahrenheit of ambient air temperature, or developing AARs for only a limited range of ambient air temperatures).[410] Vistra suggests that it would not be unreasonable for AARs to change for every one or two degrees Fahrenheit change in ambient air temperature, and that AARs be calculated for a range of temperatures that cover the historical low and historical high temperature plus some margin (*e.g.,* 10 degrees).[411] Vistra argues that recent extreme temperature events illustrate that temperatures can exceed historical levels with important reliability implications.[412]

184. ITC asserts that the Commission should adopt a transmission line rating ''floor'' where no AAR would fall below the lowest seasonal line rating and states that operational risk and planning issues outweigh any benefit of exceeding such a floor given how rarely ambient air temperatures exceed those associated with the lowest seasonal line rating.[413]

ii. Commission Determination

185. In response to Vistra's comments, we clarify that any methods for determining AARs must be valid for at least the range of local historical temperatures (over the entire period for which records are available) plus or minus a margin of 10 degrees Fahrenheit, in order to meet the *pro forma* OATT Attachment M requirement that an AAR reflect an up-to-date forecast of ambient air temperature. For example, if the historical range is –30 degrees Fahrenheit to 107 degrees Fahrenheit, the valid range must be at least –40 degrees Fahrenheit to 117 degrees Fahrenheit. Where a transmission provider uses pre-calculated AARs within a look-up table or similar database, such values must be calculated for all temperatures within such a valid range. Similarly, where a transmission provider uses a formula or computer program to calculate AARs based on forecasted temperatures, such a formula/program must be accurate across such a valid range. Furthermore, transmission providers must have procedures in place to handle a situation where forecast temperatures fall outside of such a range of temperatures, to ensure that safe and reliable transmission line ratings are used. Finally, in the event that actual temperatures set new high or low records, transmission providers are required to revise their look-up tables/databases or formulas/programs, as necessary and within a timely manner, to maintain the 10 degree Fahrenheit margin.

186. We agree with Vistra's assertion that recent extreme temperature events in California and Texas illustrate that temperatures can exceed historical levels with significant economic and reliability implications.[414] The clarification that any methods for determining AARs must be valid for at least the range of local historical temperatures plus or minus a margin of 10 degrees Fahrenheit ensures that, when such severe and unexpected weather events do occur, transmission providers will be prepared and able to continue to implement more accurate transmission line ratings.

187. With respect to the requirement for AARs to reflects an up-to-date forecast of ambient air temperatures, as Vistra points out, absent clarification, some implementations of AARs may not result in an AAR change with every change in forecasted temperature (*e.g.,* implementations that use pre-calculated look-up tables or databases, where AARs do not change within each temperature ''step''). For this reason, we clarify that a transmission provider must implement AARs that update at least with every five degree Fahrenheit increment of temperature change, in order to meet the *pro forma* OATT Attachment M requirement that an AAR reflect an up-to-date forecast of ambient air temperature. For example, an AAR is not consistent with the requirements of *pro forma* OATT Attachment M if it results in transmission line ratings that do not change when temperature forecasts increase or decrease by five degrees Fahrenheit. This clarification is consistent with ERCOT's AAR implementation, which utilizes AAR look-up tables that define AARs in five-degree Fahrenheit steps.[415] We find that larger steps may introduce inaccuracies into transmission line ratings, resulting in wholesale rates that are unjust and unreasonable. Moreover, as Vistra suggests, a minimum amount of AAR temperature granularity is necessary to ensure that transmission line ratings sufficiently reflect changes in ambient air temperatures.[416]

188. We decline to require a transmission line rating ''floor'' whereby no AAR would fall below the lowest seasonal line rating, as requested by ITC. Seasonal line ratings are generally already calculated to reflect worst-case weather conditions. However, to the extent that a transmission provider experiences extreme temperatures that exceed seasonal assumptions, the resulting transmission line ratings will be more accurate than seasonal line ratings and will send important price signals to market participants. In such circumstances, transmission providers should be able to plan for such extreme temperatures given current temperature forecasting capabilities.

g. AAR Liabilities

i. Comments

189. Transmission owners also discuss and request protection from liabilities, which might result from AAR implementation. For example, explaining that using AARs in the day-ahead and/or real-time market may result in different congestion patterns than were anticipated, MISO Transmission Owners argue that transmission owners should not be responsible for any resulting uplift or for any impacts on the value of financial transmission rights (FTR) or the value of other market trades, uplift costs, or other losses resulting from the

[409] Vistra Comments at 6–7.

[410] *Id.* at 6.

[411] *Id.* at 6–7.

[412] *Id.* at 7.

[413] ITC Comments at 15–16.

[414] Vistra Comments at 6–7.

[415] Commission Staff Paper at 7.

[416] Vistra Comments at 6–7.

implementation of AARs. MISO Transmission Owners also contend that the Commission should absolve transmission owners from tariff violations resulting from last minute transmission line rating changes to protect public safety.[417]

190. Some commenters discuss the implications of the proposed *pro forma* OATT Attachment M for the FTR markets.[418] MISO and EEI also urge liability protections, explaining that absent liability protections, RTOs/ISOs and their members could be subject to liability if the weather is predicted incorrectly. MISO and EEI explain that implementing AARs in the day-ahead market could result in differences between the transmission line ratings used in FTR markets, and thereby impact the value of congestion rights. MISO and EEI further explain that if weather shifts unexpectedly, reliance on AARs could result in too much or too little being committed in the day-ahead market, causing financial impacts. MISO and EEI state that potential liability could also arise from possible reliability events for which it is subsequently determined that a more conservative transmission line rating could have prevented.[419] Explaining that in CAISO's congestion revenue rights (CRR) market ratepayers can be exposed to substantial losses after they become the CRR counterparty in the event some CRR auction capacity is left unpurchased, the CAISO DMM argues that transmission line ratings used in CRR auction models should still be the most conservative limits for those transmission lines instead of any higher limit enabled through hourly transmission line ratings.[420] The SPP MMU suggests that the implementation of AARs and DLRs should be coincident with an annual transmission congestion rights (TCR) auction, or the status of implementation should be clearly communicated to auction participants.[421]

191. ITC also asks that the Commission clarify that transmission owners will not be liable for any market inefficiencies that arise from inaccurate transmission line ratings, provided the transmission line ratings are communicated to the transmission provider in good faith.[422]

ii. Commission Determination

192. We decline to provide explicit liability protections related to AAR implementation, as requested by commenters. We are not persuaded that this final rule's AAR reforms introduce additional liabilities that do not already exist. To the extent there are liability concerns associated with transmission line ratings changing in real time, these concerns already exist today as RTOs/ISOs forecast load and asset owners forecast renewable energy availability in real time. Moreover, FTR auctions, like all forward planning activities, already make a variety of forward assumptions about transmission availability that do not necessarily materialize in real-time operations. As the Commission stated in the NOPR, RTOs/ISOs already periodically request, and transmission owners periodically provide, *ad hoc* transmission line rating changes based on differences between actual and assumed ambient air temperatures.[423] In those cases, as long as utilities operate in a manner consistent with good utility practice, blanket liability protection is not necessary. Nevertheless, we note that transmission providers could submit filings pursuant to FPA section 205 to the Commission to propose revised liability protections in their tariffs to the extent they believe such protections are warranted.

C. Seasonal Line Ratings

1. Seasonal Line Ratings Requirements

a. NOPR Proposal

193. In the NOPR, the Commission proposed to require transmission providers to use seasonal line ratings when evaluating requests for other (longer-term) point-to-point transmission service, *i.e.,* requests for point-to-point transmission service ending more than 10 days from the date of the request. Specifically, the Commission proposed to require transmission providers to use seasonal line ratings as the relevant transmission line ratings when: (1) Evaluating requests for longer-term point-to-point transmission service; (2) responding to requests for information on the availability of such longer-term point-to-point transmission service (including requests for ATC or other information related to such potential service); and (3) posting ATC or other information related to such longer-term point-to-point transmission service to their OASIS site.

194. For network transmission service, the Commission proposed to require transmission providers to evaluate requests to designate network resources (under section 30 of the *pro forma* OATT) or network load (under section 31 of the *pro forma* OATT) based on seasonal line ratings because the Commission found that such designations are generally long-term requests and seasonal line ratings better reflect conditions over a longer term than AARs.

195. The Commission further proposed to require transmission providers to use seasonal line ratings as the relevant transmission line ratings when determining whether to curtail or interrupt point-to-point transmission service (under section 14.7 of the *pro forma* OATT) in situations other than those in which such curtailment or interruption is necessary because of a reduction in transfer capability anticipated to occur (start and end) within the next 10 days. The Commission similarly proposed to require transmission providers to use seasonal line ratings as the relevant transmission line rating for determining the necessity of curtailment or redispatch of network transmission service or secondary service in situations other than those in which such curtailment or redispatch is necessary because of a reduction in transfer capability anticipated to occur within the next 10 days.[424]

b. Comments

196. Some commenters support[425] and others generally do not oppose the Commission's NOPR proposal to require transmission providers to use seasonal line ratings for transmission service requests and for curtailments, interruptions, and redispatch beyond the 10-day threshold. Some commenters argue that the Commission should go further by requiring that seasonal line ratings be used in transmission planning[426] and/or that more granular alternatives be used when examining transmission service involving wind resources.[427] CAISO and ISO–NE note that summer and winter seasonal line ratings are already used by transmission owners in their respective regions.[428] On the other hand, MISO Transmission Owners contend that the Commission should require seasonal line ratings in long-term transmission operations and planning only when it is beneficial to do

[417] MISO Transmission Owners Comments at 18–21.

[418] MISO Comments at 21; EEI Comments at 12; CAISO DMM Comments at 3–4, 8–9; SPP MMU Comments at 11.

[419] MISO Comments at 21; EEI Comments at 12.

[420] CAISO DMM Comments at 3–4, 8–9.

[421] SPP MMU Comments at 11.

[422] ITC Comments at 3.

[423] NOPR, 173 FERC ¶ 61,165 at P 107.

[424] *Id.* PP 88, 90.

[425] *See, e.g.,* AEP Comments at 1; EDFR Comments at 7.

[426] ACPA/SEIA Comments at 15–16.

[427] Clean Energy Parties Comments at 12.

[428] CAISO Comments at 3, ISO–NE Comments at 6.

so.[429] Similarly, Entergy argues that the Commission should not mandate the use of seasonal line ratings, explaining that it does not use seasonal line ratings, and that, instead, it uses AARs on a one-day, two-day, or hourly basis because AARs are more accurate. Entergy claims that maximum monthly temperatures in its service territory do not differ significantly enough for seasonal line ratings to create any value and therefore requirements to calculate seasonal line ratings would result in increased costs without commensurate benefits.[430]

197. SPP requests clarification on whether the seasonal line rating requirements are intended to apply to transmission service requests longer than one year in duration.[431]

c. Commission Determination

198. We adopt the Commission's proposal in the NOPR to require transmission providers to use seasonal line ratings as the appropriate transmission line ratings when: (1) Evaluating requests for transmission service—including point-to-point, network, and secondary service—ending more than 10 days from the date of the request; (2) responding to requests for information on the availability of such transmission service (including requests for ATC or other information related to potential transmission service); and (3) posting transmission availability (including ATC for point-to-point transmission service requests) or other information related to transmission service to their OASIS site.

199. Additionally, we adopt the Commission's proposal in the NOPR to require transmission providers to use seasonal line ratings as the relevant transmission line ratings when determining whether to curtail or interrupt non-firm point-to-point transmission service (under section 14.7 of the *pro forma* OATT) in situations other than those in which such curtailment or interruption is necessary because of issues related to flow limits on transmission lines anticipated to occur (start and end) within the next 10 days. We also require transmission providers to use seasonal line ratings when determining whether to curtail or interrupt firm point-to-point transmission service under section 13.6 of the *pro forma* OATT in such situations.

200. We also adopt the NOPR proposal to require seasonal line ratings be used as the relevant transmission line rating for determining the necessity of curtailment (under section 33 of the *pro forma* OATT) or redispatch (under sections 30.5 and/or 33 of the *pro forma* OATT) of network or secondary service in situations other than those in which such curtailment or redispatch is necessary because of issues related to flow limits on transmission lines anticipated to occur within the next 10 days. We continue to find that seasonal line ratings are the appropriate transmission line rating for evaluations of longer-term transmission service requests because ambient air temperature forecasts for such future periods have more uncertainty than near-term forecasts, and thus tend to converge to the longer-term ambient air temperature forecasts used in seasonal line ratings. The requirements for seasonal line ratings we adopt in this section are set forth under ''Obligations of Transmission Provider'' in *pro forma* OATT Attachment M.

201. In response to arguments from MISO Transmission Owners and Entergy that the Commission should not require seasonal line ratings or should do so only on a limited basis, we find that seasonal line ratings are needed to ensure that transmission line ratings used for evaluating requests for longer-term transmission service are accurate and result in just and reasonable wholesale rates. In response to Entergy's comment regarding its use of AARs instead of seasonal line ratings because AARs are more accurate, the seasonal line ratings requirements adopted herein do not prevent Entergy from using AARs for near-term transmission service, and in fact we require AARs to be used for near-term transmission service. Seasonal line ratings are only required to be used for longer-term transmission service. Entergy also claims that its maximum temperatures do not vary sufficiently across the year for seasonal line ratings to provide value. We find that, in general, temperatures vary sufficiently across seasons of the year for seasonal line ratings to provide value. We also find that the burden of implementing seasonal line ratings is particularly low.

202. In response to SPP's comments, we clarify that the requirements for seasonal line rating implementation do apply to transmission service requests longer than one year in duration. To the extent SPP's comments reflect any confusion about *how* to apply seasonal line ratings to service longer than a season, we clarify that such requests should be approved or denied (or availability should be determined) based on whether the requested service can be accommodated in each season (given the applicable seasonal line ratings).

203. We decline to adopt ACPA/SEIA's suggestion that seasonal line ratings should be required for transmission planning. Such a requirement is beyond the scope of this rulemaking, which is focused on remedying unjust and unreasonable wholesale rates resulting from inaccurate transmission line rating assumptions used in requests for transmission service and in transmission operations. We note that the Commission recently initiated a proceeding to examine a broad range of transmission-related issues, including regional transmission planning, in its July 2021 Advance Notice of Proposed Rulemaking in Docket No. RM21–17–000.[432]

2. Seasonal Line Rating Implementation Requirements

a. NOPR Proposal

204. In the NOPR, the Commission proposed to define a seasonal line rating in *pro forma* OATT Attachment M as ''a transmission line rating that: (a) Applies to a specified season, where seasons are defined by the transmission provider to not include more than three months in each season; (b) reflects an up-to-date forecast of ambient air temperature across the relevant season over which the rating applies; and (c) is calculated monthly, if not more frequently, for each season in the future for which transmission service can be requested.'' [433]

b. Comments

205. Many entities comment on the Commission's NOPR proposal to define ''seasonal line rating'' as a season which includes no more than three months. These entities predominately request flexibility for transmission providers to define seasonal line ratings in a manner appropriate to their climate.[434] For example, NRECA/LPPC contend that seasons do not fall into neat three-month windows and that shoulder months on either side of the summer season may resemble summer conditions more than fall or spring. For this reason, NRECA/LPPC recommend that the definition of seasonal line

[429] MISO Transmission Owners Comments at 17–18.

[430] Entergy Comments at 15.

[431] SPP Comments at 7.

[432] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* 86 FR 40266 (July 27, 2021), 176 FERC ¶ 61,024 (2021).

[433] Proposed *pro forma* OATT attach. M, Seasonal Line Rating definition.

[434] NRECA/LPPC Comments at 23–24; MISO Transmission Owners Comments at 18; Entergy Comments at 15; SPP Comments at 8; EEI Comments at 9; ITC Comments at 9–10; MISO Comments at 20–21; SDG&E Comments at 3.

ratings be revised to accommodate regional considerations.[435] MISO Transmission Owners argue that the Commission should not require seasonal line rating durations to be limited to no more than three months because weather patterns vary widely.[436]

206. Duke Energy similarly states that temperatures in its Florida service territory do not differ enough to justify seasonal line ratings. Duke Energy also argues that, at a minimum, the Commission should clarify that one seasonal line rating set may have transmission line ratings equal to another seasonal line rating set, as long as the transmission line ratings are consistent with historically observed and/or expected weather patterns.[437] MISO states that requiring seasonal line ratings to be unique from season to season may introduce arbitrary differences in seasonal line ratings.[438]

207. ITC also asserts that the Commission should allow transmission owners to determine the number and length of seasons in their service territory so that seasonal line rating definitions may recognize differences in regional climates.[439] PacifiCorp states that it currently only uses summer and winter ratings and that implementation of the proposed three month seasonal requirements would require substantial expansion to its Weak Link databases.[440] PacifiCorp further states that firm contractual commitments may need to be reexamined and remedied if previously granted levels of transmission service cannot be honored under this seasonal line ratings construct.[441]

208. SPP notes that the three-month season duration conflicts with the four-month season length established by SPP's stakeholders.[442]

209. Other commenters question the proposed requirement for a ''seasonal line rating'' to ''forecast'' ambient air temperatures across the relevant season. SDG&E, for example, questions the value of basing seasonal line ratings for future seasons on weather forecast data, stating that such data is statistically insignificant that far into the future and instead suggests basing seasonal line ratings on historical weather data, specifically a 12-month, static data set per calendar month.[443] MISO Transmission Owners also state that the NOPR proposal would require seasonal line ratings to be based on forecasts, not historical data, as is currently used to develop seasonal line ratings.[444] MISO strongly urges the Commission to allow seasonal line ratings to be established based on historical data rather than forecasts because historical temperature data is known and thus more reliable than predictions. MISO contends that using forecast data would risk greater certainty.[445]

210. Finally, some commenters protest the proposed requirement for seasonal line ratings to be ''calculated monthly, if not more frequently, for each season in the future for which transmission service can be requested.'' Multiple commenters argue that this monthly updating requirement provides little value or can cause additional problems.[446] ITC argues that monthly updates to seasonal line ratings could cause significant uncertainty in planning processes and requests that the Commission instead only require seasonal line ratings be calculated for the duration of a single season.[447] Exelon explains that it does not update seasonal line ratings monthly, that its seasonal line ratings use historical temperatures to make assumptions on future maximum temperatures, and that those assumptions typically do not change. Exelon contends that there would not be any value in regularly reassessing seasonal line rating assumptions and instead suggests the following revision to the proposed definition of seasonal line rating: ''reflects a forecast of ambient air temperatures across the relevant season over which the rating applies.'' [448] MISO, on the other hand, contends that seasonal line ratings, once established, should be reviewed when equipment changes are made, climate or weather data necessitates, or when otherwise prudent.[449]

c. Commission Determination

211. In response to comments requesting that the Commission provide flexibility for seasonal line ratings to cover periods greater than three months, we modify the Commission's proposed requirement in the NOPR for how transmission providers define seasons, to provide additional flexibility. Specifically, rather than prohibiting transmission providers from including more than three months in each season, we instead require that transmission providers define seasons to include not fewer than four seasons in each year, and to reasonably reflect portions of the year where expected high temperatures are relatively consistent. Seasonal line ratings typically encompass six months. Six-month seasonal line ratings, however, necessarily require a worst-case weather representation specific to a specific month to be applied to every other month. In that context, ''summer'' seasonal line ratings could be, and often are, applied to the months of May through October despite the average historic high temperature in October, in much of the country, being considerably different than July's average historic high temperature. Moreover, ''winter'' seasonal line ratings could be, and often are, applied to the months of November through April despite the average historic high temperature in April, in much of the country, being considerably different than January's average historic high temperature. As with AARs, using unrealistic temperature assumptions will result in inaccurate seasonal line ratings, and, in turn, unjust and unreasonable wholesale rates.

212. However, we clarify that a transmission provider may define seasons shorter than three months, and/or have more than four seasons for its seasonal line rating program. For example, if a transmission provider found through its analysis that its system had a five-month ''summer'' period that was characterized by a consistent high temperature, that transmission provider could accommodate such a period by defining a three-month Summer 1 season, and a two-month Summer 2 season, and independently determining the seasonal line ratings (based on an independent analysis of temperatures) for each season. We further clarify, in response to comments from MISO, Entergy, and Duke Energy, that seasonal line ratings are not required to be arbitrarily different between seasons. As long as such ratings are *uniquely determined* in accordance with the relevant requirements, it is not prohibited for seasonal line ratings to be the same across different seasons if the independent analyses support those ratings, although we expect such instances will be infrequent.

213. In response to comments from PacifiCorp about the cost associated with implementing seasonal line ratings with three-month granularity, we appreciate that this three-month granularity requirement represents some level of burden, but we believe that the burden in most cases will be relatively low. Moreover, in cases such as

[435] NRECA/LPPC Comments at 23–24.

[436] MISO Transmission Owners Comments at 18.

[437] Duke Energy Comments at 12.

[438] MISO Comments at 20–21.

[439] ITC Comments at 9–10.

[440] PacifiCorp Comments at 3.

[441] *Id.* at 7.

[442] SPP Comments at 8.

[443] SDG&E Comments at 3.

[444] MISO Transmission Owners Comments at 34.

[445] MISO Comments at 21.

[446] Exelon Comments at 12–13; EEI Comments at 8–9; ITC Comments at 11; SDG&E Comments at 3.

[447] ITC Comments at 11.

[448] Exelon Comments at 12–13.

[449] MISO Comments at 21.

PacifiCorp describes, we believe that seasonal line ratings with a three-month granularity represent a more accurate representation of existing transfer capabilities and that using a more accurate representation of existing transfer capabilities will require transmission providers to more accurately examine the feasibility of existing contracts.

214. In doing so, our expectation is that, in at least certain circumstances, transmission providers will find that certain existing approved transmission service, accepted based on six-month winter seasonal air temperature assumptions of 32 degrees Fahrenheit (or other similar assumptions), are not able to be effectuated without curtailment, interruption, and/or redispatch, given likely warmer temperatures in shoulder periods falling within that six-month winter season.

215. In response to comments discussing the burden of calculating seasonal line ratings monthly, we modify the definition of seasonal line rating proposed in the NOPR to require that seasonal line ratings be calculated ''annually, if not more frequently,'' rather than ''monthly, if not more frequently.'' We adopt the remainder of the definition unchanged from the Commission's proposal in the NOPR. We agree with MISO that seasonal line ratings, once established, should be reviewed when equipment changes are made, climate or weather data necessitates, or when otherwise prudent. However, we also agree with commenters concerned about the burden of calculating monthly updates to seasonal line ratings and are persuaded that the underlying weather assumptions of seasonal line ratings are unlikely to change on a monthly basis. We believe that a requirement for annual recalculations of seasonal line ratings strikes an appropriate balance between ensuring seasonal line ratings continue to be accurate as weather patterns change,[450] and the costs associated with updating such transmission line ratings on a regular basis.

216. Finally, in response to comments that seasonal line ratings should be allowed to be based on historical temperatures, rather than forecasted temperature values, we clarify that seasonal line ratings may be derived from historical temperatures. Seasonal line ratings are an important input to longer-term sales for transmission service, and in that context are inherently forward-looking, but, given the challenges of forecasting future temperatures discussed in Section IV.b.2.a, seasonal line ratings may be based on historical temperatures, as long as such practices are consistent with good utility practice and otherwise meet the requirements in *pro forma* OATT Attachment M.

D. Exceptions and Alternate Ratings

1. NOPR Proposal

217. In the NOPR, the Commission proposed to require the use of AARs in many instances but allowed for the use of an alternative transmission line rating when a transmission provider determines that a transmission line is not affected by ambient air temperatures. Specifically, the Commission stated that not all transmission line ratings are affected by ambient air temperatures, either because the technical transfer capability of the limiting conductors and/or limiting transmission equipment is not dependent on ambient air temperatures, or because the transmission line's transfer capability is limited not by ambient air temperatures but by a transmission system limit such as a system voltage or stability limit. For this reason, the proposed language under the ''Exceptions'' paragraph of *pro forma* OATT Attachment M accommodates such transmission lines without requiring unwarranted calculations or updates. Attachment M provides that, consistent with good utility practice, where the transmission provider determines that a transmission line is not affected by ambient air temperatures, the transmission provider may use a transmission line rating for that transmission line that is not an AAR or seasonal line rating.[451]

218. Additionally, the Commission proposed in the NOPR to include, in *pro forma* OATT Attachment M under the ''System Reliability'' section, a reliability ''safety valve.'' This exception provides that, if the transmission provider reasonably determines, consistent with good utility practice, that the temporary use of a transmission line rating different than would otherwise be required by *pro forma* OATT Attachment M is necessary to ensure the safety and reliability of the transmission system, then the transmission provider will use such an alternate transmission line rating.[452]

2. Comments

219. Several commenters state that certain transmission elements, such as underground cables, are not exposed to ambient air temperatures, and thus should be exempt from the AAR requirements.[453] For example, NYISO explains that many of its thermally limited transmission elements are underground cables.[454] While NYTOs note that NYPA and Consolidated Edison have piloted the use of DLRs on underground cables,[455] NYISO and NYTOs explain that underground cable ratings are typically the result of line-specific operating conditions (*e.g.,* thermal issues in the oil-filled pipe) and generally do not vary with ambient air temperatures.[456] For this reason, NYISO and NYTOs do not support AAR implementation on underground cables.[457] PJM and Eversource similarly request an exception from the proposed AAR requirements for underground cables, noting that their ratings are not affected by ambient air temperatures.[458]

220. NYTOs and NRECA/LPPC contend that AARs may not be appropriate on older transmission facilities.[459] For example, NRECA/LPPC assert that a transmission provider should be allowed to obtain a waiver from the AAR requirements when implementation would be too difficult or costly, noting that this may especially be the case for older transmission facilities.[460] Relatedly, EEI includes asset health as one consideration that might be taken into account by transmission owners in their recommendation for transmission owners to study AAR implementation and propose candidate AAR transmission lines.[461]

221. NRECA/LPPC contend that the AAR requirements should not apply to transmission lines that are not part of the bulk electric system operated above 100 kV.[462] Entergy similarly contends that AARs should not be required on facilities operated at or below 69 kV stating that such facilities are more likely to include underbuilds, such as

[450] ACPA/SEIA Comments at 8, 11; EPSA Comments at 4; New England State Agencies Comments at 6.

[451] NOPR, 173 FERC ¶ 61,165 at P 103.

[452] Proposed *pro forma* OATT attach. M, ''System Reliability''.

[453] *See, e.g.,* NYISO Comments at 8–9; NYTOs Comments at 8; PJM Comments at 6; LADWP Comments at 8.

[454] NYISO Comments at 8.

[455] NYTOs Comments at 4.

[456] NYISO Comments at 4; NYTOs Comments at 8.

[457] NYISO Comments at 8–9; NYTOs Comments at 8.

[458] PJM Comments at 6; Eversource Comments at 3.

[459] NYTOs Comments at 7; NRECA/LPPC Comments at 22.

[460] NRECA/LPPC Comments at 22.

[461] EEI Comments at 7.

[462] NRECA/LPPC Comments at 17.

third-party telecommunications facilities, and that, as a result, the use of AARs on such facilities could have significant third-party effects.[463] EEI includes voltage levels as another consideration that might be taken into account by transmission owners in their recommendation for transmission owners to study AAR implementation and propose candidate AAR transmission lines.[464]

222. LADWP requests flexibility in the implementation of AARs, noting high wind speeds in California increase wildfire risk and that it may be preferable to allow transmission line loadings to fall in those circumstances.[465] PG&E, in proposing criteria for determining candidate transmission lines for AAR implementation, identifies wildfire risk and transmission lines within high fire threat districts as transmission lines that specifically may not be considered for AAR implementation.[466] EEI includes wildfire areas as another consideration that might be taken into account by transmission owners in its recommendation for transmission owners to study AAR implementation and propose candidate AAR transmission lines.

223. CAISO, SDG&E, and SCE also note challenges or the potential inapplicability of AARs to certain transmission lines under remedial action schemes.[467] Given the challenges of applying AARs to remedial action schemes designed to prevent thermal overload, CAISO requests clarification on whether transmission lines whose thermal ratings trigger remedial action schemes should be rated using AARs.[468] SCE explains that applying AARs to remedial action schemes, which are facility-rating dependent, may adversely impact the protection scheme, potentially increasing operational complexity, and could potentially initiate a widespread chain of additional reliability considerations that would require evaluation and potential mitigation.[469] SDG&E also explains that it has flow-based remedial action schemes which use facility ratings to operate and are set to operate at a static value. According to SDG&E, all of these characteristics will cause AARs to yield no benefit to the monitored facilities and that removing this limitation will increase the complexity of the remedial action scheme.[470]

224. ISO–NE and NYISO also discuss remedial action schemes.[471] NYISO discusses corrective action plans, which create plans to respond to contingencies, and voices concern that frequently updated transmission line ratings, especially an update that lowers transmission line ratings, would have a detrimental effect on reliability should the system operating limits used to develop the corrective action plan in planning studies not materialize in real time.[472] ISO–NE requests that transmission lines where the actions or triggers of a remedial action scheme are based on a transmission line rating be exempt from any AAR requirement, noting that use of AARs on these transmission lines may require installing transmission system upgrades.[473]

225. Exelon and EEI support the NOPR's proposed exceptions but request that the applicability of the exceptions be determined by the transmission owner, not the transmission provider.[474] Exelon contends that because the NERC Reliability Standards give the transmission owner responsibility for establishing transmission facility ratings, the transmission owner should be the entity that decides when one or more of the exceptions apply.[475]

226. Finally, EPSA asks that transmission providers be required to disclose (potentially via OASIS) which transmission lines they deem as not benefitting from an AAR or seasonal line rating. EPSA also asks that transmission providers be required to disclose the reasons for making those determinations to thereby enable RTOs/ISOs and market monitors to verify those decisions. Moreover, EPSA asks that these decisions be evaluated at least every five years to ensure AAR-exempt transmission lines should continue to qualify for exceptions.[476]

3. Commission Determination

227. As set forth in *pro forma* OATT Attachment M, we adopt the NOPR proposal to allow exceptions to the AAR and seasonal line rating requirements in instances where the transmission provider determines, consistent with good utility practice, that the transmission line rating of a transmission line is not affected by ambient air temperatures.[477] In this instance, the transmission provider may use a transmission line rating for that transmission line that is not an AAR or seasonal line rating. Examples of such a transmission line may include (but are not limited to): (1) A transmission line for which the technical transfer capability of the limiting conductors and/or limiting transmission equipment is not dependent on ambient air temperatures; or (2) a transmission line whose transfer capability is limited by a transmission system limit (such as a system voltage or stability limit) which is not dependent on ambient air temperatures. As discussed in the NOPR, we adopt this exception because not all transmission line ratings are affected by ambient air temperature, either because the technical transfer capability of the limiting conductors and/or limiting transmission equipment is not dependent on ambient air temperature, or because the transmission line's transfer capability is limited by a transmission system limit (such as a system voltage or stability limit) which is not dependent on ambient air temperature.[478]

228. We also adopt the NOPR proposal to establish a ''System Reliability'' section in *pro forma* OATT Attachment M that will allow a transmission provider to temporarily use a transmission line rating different than would otherwise be required under *pro forma* OATT Attachment M in instances when the transmission provider reasonably determines, consistent with good utility practice, that the use of such a temporary alternate rating is necessary to ensure the safety and reliability of the transmission system.[479] As discussed in

[463] Entergy Comments at 10–11.

[464] EEI Comments at 7.

[465] LADWP Comments at 6–7.

[466] PG&E Comments at 5.

[467] SCE Comments at 4; SDG&E Comments at 4; CAISO Comments at 12–13.

[468] CAISO Comments at 12–13.

[469] SCE Comments at 4.

[470] SDG&E Comments at 4.

[471] NYISO Comments at 7–8; ISO–NE Comments at 9.

[472] NYISO Comments at 7–8.

[473] ISO–NE Comments at 9.

[474] Exelon Comments at 2; EEI Comments at 6.

[475] Exelon Comments at 11.

[476] EPSA Comments at 4.

[477] As discussed in Section IV.B.2.b, we clarify that transmission owners, not transmission providers, are responsible for calculating transmission line ratings. However, in the RTO/ISO regions where there is a distinction between transmission owners and transmission providers, we clarify that we expect RTOs/ISOs to require their member transmission owners to make timely determinations on transmission line rating exceptions, and to provide them to the RTO/ISO. In such instances, we require the transmission provider to explain in its compliance filing, as part of its implementation of the new *pro forma* OATT Attachment M, through what mechanism (tariff, membership agreement, etc.) the transmission owner(s) will have the obligation for making and communicating to the transmission provider the timely determinations related to transmission line ratings exceptions.

[478] NOPR, 173 FERC ¶ 61,165 at P 103.

[479] Because the ''System Reliability'' section provides an exception and does not establish a requirement, we change the verb tense in this section to indicate that in such circumstances, the transmission provider *may* use an alternate transmission line rating rather than stating that the

Continued

the NOPR, while we expect that such alternate transmission line rating authority would be needed infrequently, if ever, we adopt the ''System Reliability'' section of *pro forma* OATT Attachment M to resolve any instance where a transmission provider reasonably believes that the requirements for transmission line ratings conflict with system safety or reliability.[480]

229. We decline to adopt the further specific exceptions requested by commenters. First, with respect to underground cables, as multiple commenters note, the transfer limit of underground cables is generally not affected by ambient air temperatures. Rather than adopting a blanket exception for underground transmission lines, we note that where the technical transfer limits of such cables are not affected by ambient air temperatures, they would satisfy the exception for instances in which the transmission line rating of a transmission line is not affected by ambient air temperatures. Because the transmission line ratings for underground transmission lines are generally the result of thermal issues in the oil-filled pipe, we agree with commenters that underground transmission lines likely satisfy such exception.

230. With respect to older transmission facilities, we decline to adopt an exception from the AAR requirements for such facilities. We do not find the arguments that these facilities cannot be rated using AARs persuasive. For one, Reliability Standard FAC–008–5, which sets forth requirements to ensure that transmission line ratings used in operations are determined on a technically sound basis, makes no distinction with respect to age of transmission lines: Ratings for all transmission lines must be based on technically sound principles outlined in the Reliability Standard.[481] Moreover, regardless of transmission facility age, the principles of transmission line sag and tension are correlated with the conductor material and construction style. A conductor's sag, tension, and swing properties are used to calculate clearances to vegetation, structures, and other distribution/communication lines. For older transmission lines that do not have computerized sag/tension values, graphical methods can be used to generate the values.[482] These values for older transmission lines, similar to parameters for new facilities, are used to calculate transmission line ratings and adjust transmission line ratings based on various operating/ambient air temperatures.

231. Third, we decline to adopt a blanket exception from the AAR requirements for transmission facilities below a specific voltage threshold. Commenters have not explained why transmission line ratings from lower voltage transmission facilities cannot be rated using AARs. Rather, we find that the same principles and factors determining transmission line ratings for higher voltage transmission lines apply to lower voltage transmission line ratings. We further note that within RTOs/ISOs (and possibly in other areas), lower voltage transmission lines often represent the binding transmission constraints that cause congestion, because such lines are at their limits within the modeled contingencies, and so we expect that excluding such transmission lines would meaningfully reduce the benefits of AARs. However, in response to Entergy's comments,[483] we note that in cases where lower voltage transmission facilities might host third-party under-build, such under-build can and should be considered when developing the sag limits that inform a transmission facility's AARs.

232. Fourth, we decline to adopt a blanket exception for nomogram facilities, for transmission facilities that are part of certain remedial action schemes, or for transmission facilities in areas at risk of wildfires. For nomogram constraints, as noted in Section IV.B.1, these typically occur to protect system stability or voltage and the AAR requirements adopted herein exempt such transmission lines as well as those whose transmission line ratings that are not affected by ambient air temperatures. We also note that remedial action schemes are not inherently inconsistent with AAR implementation. For example, PJM implements both AARs and remedial action schemes.[484] In any event, if the transmission owner determines that the transmission line ratings of transmission lines associated with the remedial action schemes are not affected by ambient air temperature because the operational limitations of the remedial action scheme represent the relevant limiting element, then the ''Exceptions'' paragraph of *pro forma* OATT Attachment M would apply. Moreover, the transmission provider may also utilize the ''System Reliability'' exception of *pro forma* OATT Attachment M if the reasonably transmission provider determines, consistent with good utility practice, that the temporary use of a transmission line rating different than would otherwise be required under *pro forma* OATT Attachment M is necessary to ensure safety and reliability. While we note the various exceptions to AAR implementation that may be applicable to remedial action schemes, we expect that, in situations where the remedial action scheme is not armed, transmission providers will implement the AAR requirements unless doing so would negatively impact system reliability. Finally, to mitigate the risk of wildfires, we reiterate our adoption of the ''System Reliability'' exception in *pro forma* OATT Attachment M to ensure the safety and reliability of the transmission system. We believe this exception provides sufficient flexibility for transmission providers to use seasonal or static line ratings when reliability and good utility practice call for it.

233. As suggested by EPSA,[485] we modify proposed *pro forma* OATT Attachment M to require transmission providers to reevaluate any exceptions taken under the ''Exceptions'' paragraph of *pro forma* OATT Attachment M at least every five years to ensure that longstanding exceptions continue to be valid. However, we clarify that if the technical basis for such an exception goes away, the transmission line must be re-rated in a timely manner,[486] and that the five-year reevaluation requirement is just to ensure that any exceptions do not inadvertently grow

transmission provider ''will use'' an alternate transmission line rating as was proposed in the NOPR.

[480] NOPR, 173 FERC ¶ 61,165 at P 97.

[481] In addition to the Reliability Standard, the NERC alert in 2010 recommended that transmission owners conduct an assessment and perform any necessary remediation of rating issues including review of the current facility ratings methodology for their solely and jointly owned transmission lines to verify that the methodology used to determine facility ratings is based on actual field conditions with no distinguishment due to age of transmission assets.

[482] *See, e.g.,* ''*Sag-Tension Calculation Methods for Overhead Lines,*'' CIGRE Task Force B2.12.3 (Apr. 2016); ''*Graphic Method for Sag Tension Calculations for ACSR and Other Conductors,*'' Publication No. 8, Aluminum Company of America (1961).

[483] Entergy Comments at 10–11.

[484] For example, PJM Manual 3: Transmission Operations, Attachment A, provides a listing of the remedial action schemes in operation in PJM. PJM Manual 3 is available here: *https://pjm.com/-/media/documents/manuals/m03.ashx.*

[485] EPSA Comments at 4.

[486] The definition of transmission line rating we adopt in *pro forma* OATT Attachment M requires that transmission line ratings reflect the relevant technical limitations. Thus, when technical limitations that would justify an exception go away, that transmission line rating would need to be properly rated in a timely manner to continue to comply with the *pro forma* OATT.

stale (*i.e.,* the five-year reevaluation is not a justification for waiting five years to re-rate a transmission line). We do not specifically require a periodic re-evaluation of temporary alternate ratings, as we expect such ratings to be used over relatively short timeframes. However, we note that temporary alternate ratings may only be used during periods in which the transmission provider determines that they are necessary under the ''System Reliability'' section of *pro forma* OATT Attachment M.

234. Finally, as further discussed below in Section IV.G.3.d, we modify proposed *pro forma* OATT Attachment M to require that uses of exceptions or temporary alternate ratings under *pro forma* OATT Attachment M be posted to OASIS or another password-protected website. We require that such postings document the nature of and basis for each such exception or alternate rating, as well as the date(s) and time(s) of initiation and (if applicable) withdrawal for the exception or the alternate rating. Further, transmission providers must maintain in such databases records of which transmission line ratings and methodologies were in effect at which times over at least the previous five years. This five-year period of record retention is consistent with a majority of the document retention periods required for OASIS postings.[487]

E. Dynamic Line Ratings

1. Dynamic Line Ratings Definition

a. NOPR Proposal

235. In the NOPR, the Commission proposed to define a dynamic line rating as a transmission line rating that applies to a time period of not greater than one hour and reflects up-to-date forecasts of inputs such as (but not limited to) ambient air temperature, wind, solar heating, transmission line tension, or transmission line sag.[488]

b. Comments

236. Comments on the proposed definition were limited; however, Industrial Customer Organizations ask that the proposed definition be expanded to include additional inputs, such as conductor temperature, thermal age of the line, and the cumulative number and frequency of faults. Industrial Customer Organizations assert that thermal age of a transmission line is a more accurate measure of a transmission line's physical capability than calendar age.[489]

237. Noting that the Commission proposed to require AARs when evaluating requests for short-term transmission service and when considering potential curtailment, interruption, and/or redispatch expected to occur in the next 10 days, ACPA/SEIA argues that DLR implementation should also fulfill the AAR requirements in proposed *pro forma* OATT Attachment M.[490]

c. Commission Determination

238. We adopt the definition of DLR that the Commission proposed in the NOPR. We believe that this definition clearly sets forth a non-exhaustive list of factors affecting transmission line ratings to be input into calculations of DLRs. There are many factors that affect an individual transmission line rating; for this reason, it would be inappropriate for the Commission to attempt to create an exhaustive list of factors affecting transmission line ratings for inclusion in the definition of DLR.

239. In response to arguments from ACPA/SEIA, we clarify that because the proposed addition to the Commission's regulations defines DLRs as reflecting up-to-date forecasts of ambient air temperature, along with other variables, and because *pro forma* OATT Attachment M and the Commission's regulations adopted in this final rule also define an AAR as reflecting up-to-date forecasts of ambient air temperature, implementing DLRs satisfies the requirements in *pro forma* OATT Attachment M to implement AARs.

2. DLR Requirements

a. NOPR Proposal

240. In the NOPR, the Commission preliminarily found that between the two possible approaches to increasing transmission line rating accuracy—requiring AARs or requiring DLRs—an AAR requirement strikes a more appropriate balance between benefits and challenges than a DLR requirement. The Commission explained that, while DLRs can represent more accurate transmission line ratings than AARs, DLRs also present additional costs and challenges that AARs do not present. According to the Commission, these additional costs and challenges, relative to AARs, include placing sensors in remote locations, ensuring an appropriate level of cybersecurity, and various additional costs. Nevertheless, the Commission sought comment on whether to require transmission providers to implement DLRs across their transmission systems or on certain transmission lines that have the most to benefit from DLRs.[491]

241. Recognizing that DLRs have benefits in certain circumstances, the Commission proposed to require RTOs/ISOs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings (for each period for which transmission line ratings are calculated) at least hourly. Absent these capabilities, the Commission reasoned, the voluntary implementation of DLRs by transmission owners in some RTOs/ISOs would be of limited value, as their more dynamic ratings would not be incorporated into RTO/ISO markets.[492] The Commission stated that it expected that many of the systems and procedures RTOs/ISOs would need to develop are likely to already be required as part of compliance with the proposed AAR requirements. Nonetheless, the Commission sought comment on the additional costs, if any, needed to comply with the proposed requirement that RTOs/ISOs also be able to accommodate frequently updated transmission line ratings from transmission owners.[493]

b. Comments

242. Nearly all transmission owners that filed comments about DLRs either oppose a mandate to implement DLRs on all transmission lines[494] or oppose a mandate in any form.[495] Many of these transmission owners, as well as some RTOs/ISOs, see the merits of DLRs on some transmission lines, but only after taking into account transmission line characteristics that would make DLRs more or less cost effective.[496]

243. In opposing a mandate to implement DLRs on all transmission lines, many transmission owners focus on the cost and challenges associated

[487] 18 CFR 37.6 (Information to be posted on the OASIS).

[488] NOPR, 173 FERC ¶ 61,165 at P 25.

[489] Industrial Customer Organizations Comments at 26.

[490] ACPA/SEIA Comments at 12–13.

[491] NOPR, 173 FERC ¶ 61,165 at P 100.

[492] NOPR, 173 FERC ¶ 61,165 at P 108.

[493] *Id.* P 109.

[494] APS Comments at 8; NYTOs Comments at 2; Indicated PJM Transmission Owners Comments at 13; PG&E Comments at 11–12.

[495] AEP Comments at 6; Dominion Comments at 9; Entergy Comments at 14; BPA Comments at 6; Exelon Comments at 3; PacifiCorp Comments at 5–6; NRECA/LPPC Comments at 3; MISO Transmission Owners Comments at 45–46; ITC Comments at 14–15.

[496] APS Comments at 8; Exelon Comments at 3, 13; PacifiCorp Comments at 5–6; EEI Comments at 15; ITC Comments at 12; AEP Comments at 6; NYTOs Comments at 4, 12–13; Dominion Comments at 9–11; NYISO Comments at 5; PJM Comments at 10–11.

with DLRs. Some offer rough quantitative estimates of these costs. For example, BPA explains that DLR implementation would require significant investment of potentially over $1 million per transmission line in monitoring equipment, software, and hardware to submit and host the data.[497] MISO Transmission Owners explain that one transmission owner's experience with DLRs in MISO suggests that DLR implementation could cost between $100,000 and $200,000 per transmission line. MISO Transmission Owners assert that the cost to implement DLRs on all MISO transmission lines could be $1.5 billion (estimating $150,000 per line multiplied by 10,000 lines on the MISO system).[498]

244. Other transmission owners offer qualitative assessments of the potential costs and challenges associated with DLRs. APS asserts that DLRs are a high cost option with limited benefits.[499] Exelon explains that any investment in DLRs could come at the expense of investment in other equipment.[500] As EEI, Exelon, and NYTOs explain, there are additional costs and challenges associated with sensor and communication technology installation, cybersecurity, and with DLRs themselves, which tend to fluctuate.[501] Entergy does not use DLRs and contends that DLRs present significant technical, logistical, and financial commitments, that the input data is too unpredictable, and that, while sensors work, they are not predictive of future conditions.[502] Dominion also articulates concerns with DLR data interruptions.[503] Others note the challenges associated with implementing DLRs on transmission lines traversing multiple temperature and wind climates.[504] Finally, NYTOs note that, because AARs and DLRs are constantly changing, their use in real-time operations could lead to violations of NERC Reliability Standard FAC–008 if there are discrepancies, potentially caused by a software calculation error. NYTOs are concerned that there would be no allowance for time to identify any calculation errors. For this reason, NYTOs aver that independent software validation solutions would be needed.[505]

245. Many transmission owners believe that DLRs have merit in certain applications, but argue that further study is needed. Some explain that they have experience with DLR pilot projects and limited DLR implementation and state that DLRs are likely economic in certain applications.[506] For example, Dominion explains that it is currently analyzing three separate DLR pilot programs, but cautions that it is too early to judge the effectiveness of the technology.[507] Potomac Economics and several transmission owners caution that the current focus should be on AAR implementation, not DLR implementation, and that the benefits of DLRs should be reassessed after AAR implementation.[508] Sunflower does not rule out support for future DLR implementation, but states that DLRs must be thoroughly studied and tested first.[509] Southern Company and NYTOs oppose implementation of *either* AARs or DLRs on all transmission lines. NYTOs instead suggest a compliance process to select transmission lines for either AAR or DLR implementation similar to the Order No. 1000 process for regional transmission planning, while Southern Company suggests that the Commission adopt a process similar to its ATC requirements and direct transmission providers to identify transmission facilities that would most benefit from both AAR and DLR implementation.[510] While NRECA/LPPC generally do not oppose using AARs and DLRs, they assert that consumer benefits in the form of lower costs should remain the primary focus, so long as safety and reliability are uncompromised. Furthermore, NRECA/LPPC argue that conservative transmission line ratings of facilities must continue to account for unanticipated conditions and human error.[511]

246. Similarly, RTOs/ISOs caution that a full DLR mandate is premature[512] and some argue that the decision to study or pursue DLRs should be left to transmission owners.[513] PJM asserts that RTOs/ISOs could rank the most congested transmission lines, which might serve to test the degree to which such transmission lines might be impacted by DLR implementation, and asserts that DLRs should only be used on the most congested transmission lines.[514] SPP believes that the DLR implementation costs to transmission owners may outweigh the benefits, estimating that DLR implementation that requires an EMS upgrade would cost transmission owners up to $1 million and, without upgrading the EMS, DLR implementation would cost an additional $100,000–$500,000 annually in additional SCADA communications with the Reliability Coordinator's EMS.[515] ISO–NE notes that transmission lines in its territory often do not follow a linear path, which can result in different transmission line ratings for different segments of the same transmission line at the same time if wind speed is taken into account rather than solely ambient air temperature.[516] NYISO explains that its currently-effective DLR functionality and seasonal transmission line ratings ''support effective system planning, efficient markets, reliable system operation, and the flexibility needed for NYISO and TO operators to respond to real-time system conditions'';[517] however, this has historically been used to increase transmission line ratings in real time based on ambient conditions. NYISO voices concern that frequently updated transmission line ratings, especially those that lower transmission line ratings in real-time during emergency conditions, would have a detrimental effect on reliability in the context of corrective action plans designed to create plans to respond to contingencies, should the system operating limits used to develop the corrective action plan be lowered in real time.[518] NYISO further explains that instances wherein increased transmission line ratings in the day-ahead market resulting in increased commitments are then reduced in the real-time markets could increase uplift costs.[519]

247. The market monitors are divided over the timing and implementation of a DLR mandate. The SPP MMU recommends DLR implementation on all transmission lines, not just congested transmission lines, to account for the interlinkage among transmission lines

[497] BPA Comments at 6.

[498] MISO Transmission Owners Comments at 47.

[499] APS Comments at 8.

[500] Exelon Comments at 16.

[501] EEI Comments at 15; Exelon Comments at 15–16; NYTOs Comments at 4.

[502] Entergy Comments at 14–15.

[503] Dominion Comments at 11.

[504] NYTOs Comments at 12; Exelon Comments at 14; BPA Comments at 6.

[505] NYTOs Comments at 7.

[506] EEI Comments at 15; ITC Comments at 12; AEP Comments at 6; Exelon Comments at 13; APS Comments at 8; NYTOs Comments at 4, 12–13; Dominion Comments at 9–11.

[507] Dominion Comments at 4.

[508] Potomac Economics Comments at 20; ITC Comments at 14–15; PG&E Comments at 11–12; NYTOs Comments at 13.

[509] Sunflower Comments at 5–6.

[510] NYTOs Comments at 10; Southern Company Comments at 2–3.

[511] NRECA/LPPC Comments at 7–8.

[512] CAISO Comments at 16; ISO–NE Comments at 12; NYISO Comments at 7; PJM Comments at 10–11; MISO Comments at 33.

[513] CAISO Comments at 16; PJM Comments at 10–11,13; MISO Comments at 33.

[514] PJM Comments at 12.

[515] SPP Comments at 12.

[516] ISO–NE Comments at 19.

[517] NYISO Comments at 6.

[518] *Id.* at 7–8.

[519] *Id.* at 14.

and to avoid preferential treatment or gaming of transmission lines selected for DLR.[520] On the other hand, Potomac Economics suggests further study and discourages mandates for both universal and targeted DLR implementation at this time.[521] The CAISO DMM states that it would support the use of DLRs where practicable in the future and suggests that conservative assumptions for some applications, such as in the day-ahead market or future advisory intervals, may be appropriate. As such, the CAISO DMM requests that RTOs/ISOs retain the ability to adjust modeled transmission for reliability.[522]

248. State agencies, consumer advocacy groups, and other miscellaneous organizations generally support DLR implementation, but vary widely on what approach the Commission should take. Some groups support the Commission requiring full DLR implementation. R Street Institute contends that DLRs should be required by default, with exception given when justified by a cost-benefit analysis.[523] Industrial Customer Organizations likewise contend that the Commission should require the implementation of DLRs unless a transmission owner can establish that costs would exceed benefits to consumers.[524] ACORE recommends the Commission take further steps to encourage DLR deployment.[525] Clean Energy Parties argue that DLR is superior to AAR, and that the Commission should establish criteria for when DLR is required.[526] ACPA/SEIA contend that DLR can provide significant benefits,[527] and that congestion reviews should evaluate both AARs and DLRs for any congested transmission line.[528]

249. Several groups also argue for more targeted or limited DLR requirements. WATT proposes a list of criteria for requiring DLR implementation,[529] and contends that such criteria can help overcome concern about costs exceeding benefits.[530] ACPA/SEIA similarly support requiring an evaluation of both AARs and DLRs for any congested transmission line, and a DLR requirement where appropriate.[531] EDFR supports requiring DLRs when cost-benefit analysis or public policy justifies their use.[532] EPSA contends that the Commission should first require DLRs only on transmission lines that are deemed to be the most critical for optimizing system performance.[533] Vistra states that it uses DLRs with some of its facilities in ERCOT, and states that it has seen improved congestion management, greater deliverability of low-cost energy to load, lower costs for load, higher revenues for low cost remote generation, and lower hedging costs.[534] Vistra states that DLR benefits will become increasingly important as more zero marginal cost energy resources are added to the resource mix.[535]

250. Several other groups support DLR mandates or oversight of voluntary deployment. TAPS supports voluntary implementation of DLRs, but also argues that subjective deployment decisions should be subject to monitoring.[536] Industrial Customer Organizations contend that the Commission should, at minimum, require the implementation of staggered pilot programs requiring the implementation of DLRs on the most thermally limited, congested transmission lines.[537] Certain TDUs argue that DLR utilization can improve contingency planning and defer or eliminate the need for transmission line upgrades or reconductoring.[538]

251. In response to the Commission's proposal to require RTOs/ISOs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings (for each period for which transmission line ratings are calculated) at least hourly, however, commenters are broadly supportive. For example, PacifiCorp agrees with the Commission that many of the systems and procedures RTOs/ISOs would need to develop to accept DLRs are likely to already be required as part of compliance with the requirements to adopt AARs.[539] PJM notes that, as part of DLR pilot projects, it has received and reviewed DLRs.[540] Similarly, NYISO notes that it has successfully implemented DLR functionality to allow asset owners to increase real-time transmission line capability, when appropriate, and notes that this implementation does not differentiate between AARs and DLRs.[541]

c. Commission Determination

252. Based on the record, we decline to mandate DLR implementation in this final rule.

253. We agree with commenters that highlight the benefits to DLR implementation.[542] For example, use of DLRs generally allows for greater power flows than would otherwise be allowed, and its use can also detect situations where power flows should be reduced to maintain safe and reliable operation and avoid unnecessary wear on transmission equipment.[543] We agree with EPSA, which, citing to a PJM pilot program with AEP and PPL Electric Utilities Corporation, explains that there could be significant benefits to strategically expanding DLR deployment.[544] Additionally, we agree with Exelon that there may be targeted applications in which DLRs can provide net benefits to customers. For example, when the limiting element for a transmission facility experiencing significant congestion is the conductor and conditions besides ambient air temperature have a consistent and significant impact on the power carrying capabilities of the line, DLRs may provide more accurate transmission line ratings than AARs and therefore may provide significant benefits.[545]

254. However, we appreciate that while DLRs can represent more accurate transmission line ratings than AARs, DLR implementation also presents additional costs and challenges not found in AAR implementation. Relative to AARs, these additional costs and challenges include placing sensors in remote locations, ensuring the cybersecurity of sensors, and various additional costs. The record in this proceeding is not sufficient for the Commission to evaluate the relative benefits and costs and challenges of DLR implementation. For this reason,

[520] SPP MMU Comments at 4.

[521] Potomac Economics Comments at 20.

[522] CAISO DMM Comments at 2–3.

[523] R Street Institute Comments at 3.

[524] Industrial Customer Organizations Comments at 5.

[525] ACORE Comments at 1.

[526] Clean Energy Parties Comments at 5, 7.

[527] ACPA/SEIA Comments at 5–6.

[528] *Id.* at 9–11.

[529] WATT proposes for sensor-based DLR to be required on all thermally limited transmission lines rated 69 kV or greater when market congestion totaling over $1 million has occurred within the past year; the transmission line is identified as being a constraint projected to have market congestion over $1 million over the coming three years as a part of the current RTO/ISO transmission planning cycle process, which can be economic or reliability based; thermally limited transmission lines show up as limiting in generator interconnection system impact studies; or generation curtailed by more than 10% on average for one year due to factors that include transmission line capacity. WATT Comments at 10.

[530] *Id.* at 2, 10–11.

[531] ACPA/SEIA Comments at 8–10.

[532] EDFR Comments at 4.

[533] EPSA Comments at 6.

[534] Vistra Comments at 2–3.

[535] *Id.* at 3.

[536] TAPS Comments at 15–17.

[537] Industrial Customer Organizations Comments at 25.

[538] Certain TDUs Comments at 6–7.

[539] PacifiCorp Comments at 6.

[540] PJM Comments at 11–12.

[541] NYISO Comments at 4.

[542] Clean Energy Parties Comments at 6; EPSA Comments at 5; Exelon Comments at 13.

[543] Clean Energy Parties Comments at 6.

[544] EPSA Comments at 5.

[545] Exelon Comments at 13.

we incorporate the record in this proceeding on DLRs into new Docket No. AD22–5–000, which we open to further explore DLR implementation.

255. Finally, we adopt the Commission's proposal in the NOPR to require RTOs/ISOs to establish and maintain systems and procedures necessary to allow transmission owners to electronically update transmission line ratings (for each period for which transmission line ratings are calculated) at least hourly, with such data submitted by transmission owners directly into the RTO's/ISO's EMS through SCADA or related systems.[546] We continue to find that, because DLR implementation may be economic in certain applications,[547] absent RTOs/ISOs having these capabilities, voluntary implementation of DLRs by transmission owners in some RTOs/ISOs would be of limited value, as their more dynamic ratings and resulting benefits would not be incorporated into RTO/ISO markets. Absent these minimum capabilities, RTO/ISO software would serve as a barrier that prevents transmission owners in RTOs/ISOs from implementing DLRs that can better reflect the actual transfer capability of the transmission system and, consequently, wholesale rates would not remain just and reasonable. Additionally, as the Commission stated in the NOPR, we continue to expect that many of the systems and procedures RTOs/ISOs would need to develop to accept DLRs are likely to already be required as part of compliance with the AAR requirements adopted in this final rule.

3. Extending to Non-RTO/ISO Transmission Providers the Requirement To Allow Transmission Owners To Electronically Update Transmission Line Ratings at Least Hourly

a. NOPR Proposal

256. In addition to requiring RTOs/ISOs to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly, the Commission also sought comment on whether there is any need to extend this same requirement to transmission providers that operate outside of an RTO/ISO.[548]

b. Comments

257. Comments on this question are limited. EEI and PacifiCorp state that there is no need to extend this requirement beyond RTOs/ISOs.[549] R Street Institute, however, observes that transmission management inefficiency and transmission line rating opacity outside RTOs/ISOs is far greater than within RTOs/ISOs, and therefore concludes that updating transmission line ratings hourly outside RTOs/ISOs would be a prudent start.[550] Similarly, WATT argues that the same requirements should apply consistently across RTOs/ISOs and non-RTOs/ISOs, noting concerns of utilities considering voluntary RTO/ISO membership that regulatory requirements are stricter within RTOs/ISOs than outside RTOs/ISOs which serves as a disincentive to RTO/ISO participation.[551]

c. Commission Determination

258. We decline to extend the requirement for RTOs/ISOs to be able to accept DLRs to non-RTO/ISO transmission providers at this time. As EEI explains, in most cases outside of an RTO/ISO market, transmission providers operate only their own transmission systems. In those cases, transmission providers have the ability to fully implement DLRs should they choose to do so. Because non-RTO/ISO transmission providers are also typically the transmission owner, we find that any requirement for non-RTO/ISO transmission providers to be able to accept DLRs would be unnecessary.

4. DLR Studies

a. NOPR Proposal

259. In the NOPR, the Commission sought comment on whether to require RTOs/ISOs to conduct a one-time study of the cost effectiveness of DLR implementation, and if so, what details/format any such study should include.[552]

b. Comments

260. Most transmission owners oppose requirements for RTOs/ISOs to study the cost effectiveness of DLR implementation.[553] One exception is PG&E, which argues that an RTO/ISO study could identify the efficacy of system-wide DLR implementation relative to more localized use.[554] Exelon opposes a study requirement, asserting that it would be costly, time-consuming, and duplicative to existing processes.[555] Indicated PJM Transmission Owners contend that there would be little point in PJM conducting another DLR study and caution that any DLR study would be costly and highly locational in nature, possibly necessitating DLR sensor installation.[556] MISO Transmission Owners question whether the RTO/ISO is the appropriate entity to study the cost effectiveness of DLR implementation and further explain that certain study details remain unaddressed.[557] Therefore, MISO Transmission Owners assert that the Commission should provide flexibility for transmission owners and RTOs/ISOs to collaborate on a voluntary basis to conduct DLR studies.[558] EEI also does not support a mandate to study DLR cost effectiveness, explaining that RTOs/ISOs already study congestion and solutions to resolve congestion in the transmission planning processes.[559] Dominion cautions that, should the Commission require DLR studies, such studies should involve transmission owners.[560] Finally, Certain TDUs explain that transparency into the benefits of DLRs is important, and they therefore support DLR studies, but argue that studies should involve the RTOs/ISOs and be incorporated into the transmission planning processes.[561]

261. Several RTOs/ISOs also discourage the Commission from requiring DLR studies.[562] MISO states that studies should be transmission line specific and driven by the transmission owners.[563] ISO–NE does not believe a study is necessary until, and unless, AARs are fully implemented. ISO–NE recommends that, if a study is required, it be carried out by a third party.[564] CAISO opposes DLR cost-effectiveness study requirements but would not

[546] However, we add the DLR requirement adopted herein to 18 CFR 35.28(g)(13), rather than to 18 CFR 35.28(g)(12) as proposed in the NOPR, in light of the requirements recently approved in Order No. 2222. *See Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 2222, 85 FR 68450 172 FERC ¶ 61,247 (2020), *order on reh'g,* Order No. 2222–A, 174 FERC ¶ 61,197 (2021).

[547] EEI Comments at 15; ITC Comments at 12; AEP Comments at 6; Exelon Comments at 13; APS Comments at 8; NYTOs Comments at 4, 12–13; Dominion Comments at 9–11.

[548] NOPR, 173 FERC ¶ 61,165 at P 109.

[549] EEI Comments at 18–19; PacifiCorp Comments at 6.

[550] R Street Institute Comments at 5.

[551] WATT Comments at 15.

[552] NOPR, 173 FERC ¶ 61,165 at P 110.

[553] MISO Transmission Owners Comments at 38; ITC Comments at 15; Exelon Comments at 6; Dominion Comments at 12; EEI Comments at 16; Indicated PJM Transmission Owners Comments at 13–14.

[554] PG&E Comments at 11.

[555] Exelon Comments at 6.

[556] Indicated PJM Transmission Owners Comments at 13–14.

[557] Specifically, MISO Transmission Owners explain that the Commission should clarify for what purpose the study results would be used.

[558] MISO Transmission Owners Comments at 38.

[559] EEI Comments at 16.

[560] Dominion Comments at 12.

[561] Certain TDUs Comments at 7.

[562] CAISO Comments at 16; ISO–NE Comments at 12; MISO Comments at 33.

[563] MISO Comments at 33.

[564] ISO–NE Comments at 12.

oppose an informational report on its work with stakeholders evaluating the costs and benefits of DLRs.[565] PJM argues that several outstanding issues should be studied and recommends: (1) Periodic reporting requirements by region on the status and lessons learned from DLR deployments; (2) requiring transmission owners to document their DLR implementation processes; and (3) technical conferences to share best practices on DLR implementation.[566] SPP notes that it recently published a whitepaper that examined the costs and benefits of DLRs.[567]

262. EPRI argues that, before studies on DLR cost effectiveness can be conducted, studies on monitoring systems must be conducted. According to EPRI, such studies must identify a technical basis to select sensors, establish the accuracy of sensors, develop an understanding of sensors' reliability and maintenance needs, and identify methods to integrate monitoring system data into an EMS. EPRI states that unbiased information on monitoring systems is not yet available and explains that some commercial DLR monitoring equipment may not be up to utility standards.[568]

263. While RTOs/ISOs and transmission owners generally oppose a study requirement, several commenters are more supportive of DLR study requirements. New England State Agencies support independent studies on the cost-effectiveness of DLRs as a first step before ordering implementation.[569] Ohio FEA does not support Commission requirements for RTOs/ISOs to study the cost effectiveness of DLR implementation, but, noting that DLRs may be cost effective on certain lines, states that pilot programs should be initiated to identify these segments through the stakeholder process rather than a requirement.[570] CEA supports DLR feasibility studies to address the cost of infrastructure and EMS–SCADA changes, the challenges of implementing DLRs on transmission lines with varying climates and little communications infrastructure, and DLR forecasting challenges, but questions whether risks and costs will be borne by RTOs/ISOs or by transmission owners.[571] Clean Energy Parties support requiring RTOs/ISOs to conduct a study of the cost effectiveness of DLR implementation.[572] OMS contends that industry and regulators need more information to better understand the potential benefits of DLRs.[573]

c. Commission Determination

264. In consideration of the comments on this issue, we decline to require one-time DLR studies at this time. We agree with New England State Agencies and OMS that studies assessing the cost effectiveness of DLR implementation may be useful to transmission providers in identifying possible transmission line candidates for DLR deployment and serve as a good first step prior to consideration of additional requirements.[574] Specifically, such studies may support the development of various criteria transmission providers could use to identify candidates for DLR deployment.[575] However, we also agree that there are various factors to consider in order to determine when and how such studies should be conducted, including whether such studies: Should be conducted by independent third parties; should incorporate the adoption of AARs into the analysis;[576] and would overlap with existing congestion studies in RTOs/ISOs.[577] Although we decline to require one-time DLR studies at this time, we incorporate the record in this proceeding on DLRs into new Docket No. AD22–5–000, which we open to further explore DLR implementation.

5. Advanced Transmission Technology Cost Recovery

a. Comments

265. ENEL states that advanced transmission technologies can achieve cost savings and provide value to ratepayers, such that transmission owners should be eligible to recover their costs through rate base and to earn a return, and requests clarification on the cost allocation and recovery associated with AAR and DLR implementation.[578]

b. Commission Determination

266. We are not considering in this proceeding whether to grant special rate treatment for technologies used to implement AARs and DLRs. We are also not considering in this proceeding whether to change the Commission's policies regarding cost recovery. While the purchase and installation cost of equipment that may normally be considered as plant in service may be eligible for inclusion in rate base, without knowing the specific facts related to a particular investment, it would be impractical to address their cost recovery at this time. However, once specific costs are known, parties can file with the Commission to seek recovery, as appropriate.[579]

F. Emergency Ratings

1. NOPR Request for Comments

267. In the NOPR, the Commission sought comment on: (1) Whether to require transmission providers to use unique emergency ratings; (2) the degree to which transmission providers use or are provided with unique emergency ratings and the emergency rating durations that are commonly used; (3) whether and how requirements to implement unique emergency ratings would impact the useful life of transmission equipment; and (4) the feasibility of calculating emergency ratings on transmission equipment other than conductors and transformers.[580] The Commission stated that emergency ratings should not be arbitrarily set equal to normal ratings, but rather should be developed from appropriate, unique technical inputs.[581] The Commission acknowledged that there may be some instances when, after a proper technical analysis considering the relevant rating timeframes, the emergency rating is equal to the normal rating.[582]

268. The Commission observed that, for short periods of time, most transmission equipment can withstand high currents without sustaining damage, which allows transmission owners to develop two sets of ratings for most facilities: Normal ratings that can be safely used continuously (*i.e.,* not time-limited) and emergency ratings that can be safely used for a limited period of time. Whether and how a transmission owner establishes emergency ratings is important because emergency ratings are a critical input into determining operating limits in market models, both during normal operations and during post-contingency operations. Market models often allow

[565] CAISO Comments at 16.

[566] PJM Comments at 13–14.

[567] SPP Comments at 15.

[568] EPRI Comments at 5.

[569] New England State Agencies Comments at 14.

[570] Ohio FEA Comments at 6–7.

[571] CEA Comments at 2–3.

[572] Clean Energy Parties Comments at 11.

[573] OMS Comments at 12.

[574] New England State Agencies Comments at 14; OMS Comments at 12.

[575] WATT Comments at 10; ACPA/SEIA Comments at 9–10; Clean Energy Parties Comments at 7–10.

[576] ISO–NE Comments at 11–12.

[577] EEI Comments at 16; Exelon Comments at 6.

[578] ENEL Comments at 2–3.

[579] Note that the Commission convened a workshop on September 10, 2021, to discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies. Notice of Workshop, Docket Nos. AD19–19–000, RM20–10–000 (Apr. 15, 2021).

[580] NOPR, 173 FERC ¶ 61,165 at PP 111–113.

[581] *Id.* P 110.

[582] *Id.* P 46 n.57.

post-contingency flows on transmission lines to exceed normal ratings for short periods of time, as long as the flows do not exceed the applicable emergency rating for the corresponding timeframe. Because these emergency ratings are a more accurate representation of the flow limits over shorter timeframes, their use in models of post-contingency flows may produce prices which more accurately reflect actual costs to delivering wholesale energy to transmission customers. Since the transmission system is operated to withstand contingencies, the use of unique emergency ratings, where appropriate, allows for greater flows during normal conditions as well. The Commission further stated that this greater transfer capability can provide significant cost savings and afford transmission providers additional flexibility in how to respond to unforeseen events.[583] Noting the potential negative consequences of emergency ratings, however, the Commission recognized concerns that the use of emergency ratings could impact reliability by degrading affected transmission facilities and ultimately reducing the equipment's useful life.[584]

2. Emergency Ratings Definition and Implementation Requirements

a. Comments

269. Some transmission owners oppose a potential mandate to require unique emergency ratings,[585] while others do not oppose the use of emergency ratings, but oppose a mandate, asking for flexibility to determine how and when to use emergency ratings.[586] Some transmission owners note that they use emergency ratings on their systems,[587] while several of these support the use of emergency ratings.[588] PG&E, for example, notes that it currently uses emergency ratings for both planning and real-time operations.[589] APS states that the use of emergency ratings gives operators sufficient time to respond and supports their use during post-contingency operations for a 30-minute timeframe.[590] Tangibl notes that PJM's experience shows that implementation and use of unique emergency ratings is longstanding and feasible.[591]

270. Four RTOs/ISOs indicate that they use emergency ratings.[592] RTOs/ISOs are evenly divided on potential requirements to calculate and implement emergency ratings. CAISO and MISO oppose an emergency rating mandate. CAISO believes that there is no need for a mandate since it already maintains emergency ratings in the CAISO register of transmission and facility line ratings; MISO argues that any such mandate, if directed, should be to transmission owners.[593] Of the RTOs/ISOs in support of potential emergency ratings requirements, ISO–NE recognizes the benefits resulting from their use and NYISO is supportive so long as the equipment supports the transmission line rating.[594]

271. Market monitors, independent agencies, technical experts, renewable energy advocates, generation companies, and load all generally support the use of unique emergency ratings[595] and most support requirements for their use.[596] The SPP MMU and Potomac Economics support requiring transmission providers to establish emergency ratings using unique technical inputs that are separate from normal ratings.[597] Potomac Economics notes that transmission owners will not voluntarily adopt broad or consistent emergency ratings use without a requirement.[598] Industrial Customer Organizations state that the need for accurate transmission line ratings applies especially during emergency operations.[599] Tangibl contends that a spot check of facilities in PJM shows that almost all have unique emergency ratings.[600]

272. Many transmission owners emphasize that emergency ratings can be the same as the normal rating[601] and state the importance of transmission owner discretion in setting emergency ratings.[602] MISO and CAISO oppose any unique emergency ratings mandate, claiming that good reasons may exist to justify their not being unique.[603] CAISO, NYISO, and MISO provide examples of cases where emergency ratings could be the same as the normal rating for a transmission facility.[604] Recognizing these cases, CAISO requests that any final rule requiring unique emergency ratings allow for and appropriately account for exceptions.[605] The SPP MMU and Potomac Economics support requiring transmission providers to establish emergency ratings using unique technical inputs that are separate from normal ratings.[606]

273. ITC and MISO Transmission Owners argue that requiring unique emergency ratings could create a perverse incentive for normal ratings to be revised downward so that there can be unique emergency ratings.[607] Similarly, MISO argues that it is sub-optimal to artificially lower the normal ratings to create the appearance of a deviation from the emergency rating when they would otherwise be equal.[608] MISO Transmission Owners assert that requiring emergency ratings that are unique from normal ratings is unnecessary and arbitrary.[609]

274. MISO states that the NOPR appears to regard cases where transmission lines have equal emergency and normal ratings as exceptional although they may occur regularly.[610] MISO Transmission

[583] *Id.* P 112.

[584] *Id.* P 113.

[585] Dominion Comments at 12; EEI Comments at 16–17; MISO Transmission Owners Comments at 17; NRECA/LPPC Comments at 25–26; Southern Company Comments at 4.

[586] *See, e.g.,* EEI Comments at 16–17; SDG&E Comments at 4–5. Exelon and ITC, while not opposing or supporting a mandate for the use of emergency ratings, similarly contend that transmission owners should be responsible for calculating emergency ratings and determining the facilities for which they are appropriate. Exelon Comments at 19–20; ITC Comments at 12.

[587] APS Comments at 7; Dominion Comments at 4; Entergy Comments at 1; EEI Comments at 16; Exelon Comments at 22; Indicated PJM Transmission Owners Comments at 2; PacifiCorp Comments at 4; PG&E Comments at 12; SDG&E Comments at 3; WAPA Comments at 8.

[588] APS Comments at 7; Dominion Comments at 4; Exelon Comments at 22; Indicated PJM Transmission Owners Comments at 15; PacifiCorp Comments at 4.

[589] PG&E Comments at 12.

[590] APS Comments at 7.

[591] Tangibl Comments at 4.

[592] CAISO Comments at 1; NYISO Comments at 3; ISO–NE Comments at 6; MISO Comments at 25.

[593] CAISO Comments at 15; MISO Comments at 24–25 & n.45.

[594] NYISO Comments at 14 n.13; ISO–NE Comments at 10.

[595] ACPA/SEIA Comments at 17; EDFR Comments at 6; Industrial Customer Organizations Comments at 27; R Street Institute Comments at 3; Tangibl Comments at 2; WATT Comments at 13 (supported in general by LineVision).

[596] EDFR Comments at 6; Potomac Economics Comments at 4; R Street Institute Comments at 3; SPP MMU Comments at 5; Tangibl Comments at 2; WATT Comments at 13 (supported in general by LineVision).

[597] Potomac Economics Comments at 4; SPP MMU Comments at 5.

[598] Potomac Economics Comments at 4.

[599] Industrial Customer Organizations Comments at 27.

[600] Tangibl Comments at 3.

[601] *See, e.g.,* Entergy Comments at 4; Exelon Comments at 19–20; ITC Comments at 3; MISO Transmission Owners Comments at 17; NRECA/LPPC Comments at 25; SDG&E Comments at 4.

[602] *See, e.g.,* EEI Comments at 16–17; Exelon Comments at 19–20; ITC Comments at 12; MISO Transmission Owners Comments at 40–41; Indicated PJM Transmission Owners Comments at 15; SDG&E Comments at 4–5.

[603] CAISO Comments at 15; MISO Comments at 24–25.

[604] CAISO Comments at 15; NYISO Comments at 14 n.13; MISO Comments at 24–25.

[605] CAISO Comments at 15.

[606] SPP MMU Comments at 5; Potomac Economics Comments at 4.

[607] ITC Comments at 12; MISO Transmission Owners Comments at 17; MISO Comments at 25.

[608] MISO Comments at 25.

[609] MISO Transmission Owners Comments at 40.

[610] MISO Comments at 25.

Owners read the NOPR as suggesting that having the same rating for normal and emergency operations reflects a lack of effort by transmission owners to analyze and incorporate appropriate emergency ratings.[611] According to MISO Transmission Owners, it would not be problematic for the Commission to require separate normal and emergency ratings on facilities where transmission owners determine they are appropriate.[612] Similarly, MISO argues that transmission owners should evaluate a facility's normal and emergency capability separately and distinctly where each transmission line rating fully uses the technical capabilities of the installed equipment considering good utility practice, sound engineering judgment, manufacturer guidance, and equipment reliability experience for each rating type.[613]

275. The SPP MMU states that there may be cases when normal and emergency ratings are legitimately equal, but that should only be true for a very small number of transmission lines.[614] The SPP MMU notes that nearly 60% of transmission lines in SPP have identical normal and emergency ratings and argues that emergency ratings should only rarely be equal to normal ratings. Potomac Economics states that only roughly one third of the transmission line ratings provided for contingency constraints in MISO are emergency ratings compared to MISO's report that 90% of its binding constraints are contingent constraints that should be based on emergency ratings.[615]

276. OMS contends that emergency ratings should serve as the foundation for AARs.[616] OMS agrees with MISO Transmission Owners that normal and emergency ratings should not always be unique, but argues that transmission line ratings that are the same value can be derived using different methodologies.[617] OMS contends that transmission owners have the responsibility to judge the reasonableness of using non-unique emergency ratings subject to transmission provider and market monitor review.[618] EPRI states that high operating temperatures, other limiting elements in the circuit, and inability to withstand additional annealing (loss of tensile strength of the conductor through heating) may all contribute to finding emergency ratings that are identical to normal ratings, although such ratings would nonetheless be considered unique if they were developed using appropriate technical inputs.[619] Many commenters express support for requirements to provide justifications when normal and emergency ratings are identical, given that it may be appropriate in some situations for normal and emergency ratings to be identical.[620] TAPS states that the result of any individual transmission owner decision not to provide accurate emergency ratings may tie the hands of RTOs/ISOs dealing with contingencies.[621]

277. Transmission owners indicate that they use different durations for calculating emergency ratings, including hourly, daily, and two-day ahead short-term emergency ratings by Entergy,[622] up to 30 minutes during post-contingency operations by APS,[623] 30 minutes by PacifiCorp,[624] and four hours by PG&E.[625] Exelon states that it calculates four-hour emergency ratings, with long-term emergency and short-term emergency ratings set equal unless a shorter duration transmission line rating is feasible on the facility, as well as load dump ratings for up to 15 minutes.[626] Exelon notes that flexibility in the duration of emergency ratings can be beneficial and some equipment, such as phase angle regulators, can allow the transmission owner to control the flow and avoid damage from shorter-term ratings.[627] R Street Institute notes that some transmission operators use a 30 minute duration and others use two to four hour durations.[628] OMS argues that emergency ratings must accurately reflect the capability of the transmission element for a standardized, limited period of time.[629] OMS also contends that the Commission should require transmission providers to define what constitutes an emergency rating in their region and how they should be used.[630]

278. RTOs/ISOs similarly indicate that they use different durations for calculating emergency ratings, including long time emergency (four hours for winter, 12 hours for summer), short time emergency (15 minutes), and drastic action limits (five minutes) in ISO–NE,[631] up to four hours in CAISO (with some transmission owners providing shorter duration transmission line ratings),[632] and 30 minutes in MISO.[633] The SPP MMU recommends that emergency ratings be applicable on a shorter-term basis, meaning less than four hours in SPP, to observe limits of the equipment and prevent degradation.[634] The SPP MMU does not recommend requiring transmission owners to exceed normal ratings to address challenges during sustained periods of contingencies or long duration events, such as polar vortex conditions.[635] Potomac Economics recommends that any emergency ratings requirements specify the maximum permissible duration to enhance RTOs/ISOs' situational awareness and reliability.[636]

279. Many transmission owners express concern that the use of emergency ratings could risk degrading the asset and reducing its useful life.[637] SDG&E states that it does not issue unique emergency ratings for certain types of equipment due to the potential for permanent damage.[638] A few transmission owners note that the age and condition of the facilities impact whether an emergency rating may risk further damage to transmission equipment.[639] Indicated PJM Transmission Owners state that for some facilities, even minimal use of emergency ratings can have a significant impact on the facility's useful life.[640] Indicated PJM Transmission Owners note that the overuse of emergency ratings could cause asset degradation and in turn increase costs to consumers as those facilities have to be upgraded or replaced, while also having a negative impact on system reliability.[641] Both NRECA/LPPC and Entergy note that if conductors violate sag requirements from the use of emergency ratings then they pose a risk to public

[611] MISO Transmission Owners Comments at 17.
[612] *Id.* at 40.
[613] MISO Comments at 25–26.
[614] SPP MMU Comments at 4–5.
[615] Potomac Economics Comments at 7, 11.
[616] OMS Reply Comments at 11–12.
[617] *Id.* at 12.
[618] OMS Comments at 15.
[619] EPRI Comments at 7, 9–10.
[620] R Street Institute Comments at 3, 5; ACPA/SEIA Comments at 16–17; EDFR Comments at 6; TAPS Comments at 2.
[621] TAPS Comments at 18.
[622] Entergy Comments at 4.
[623] APS Comments at 7.
[624] PacifiCorp Comments at 4.
[625] PG&E Comments at 12.
[626] Exelon Comments at 21.
[627] *Id.* at 20.
[628] R Street Institute Comments at 7.
[629] OMS Comments at 13–14.
[630] *Id.* at 15.
[631] ISO–NE Comments at 6.
[632] CAISO Comments at 1, 3.
[633] MISO Comments at 23.
[634] SPP MMU Comments at 13–14.
[635] *Id.* at 5.
[636] Potomac Economics Comments at 13.
[637] *See, e.g.,* APS Comments at 7; Dominion Comments at 4; EEI Comments at 17; Entergy Comments at 2; Exelon Comments at 22–23; Indicated PJM Transmission Owners Comments at 16–17; ITC Comments at 12.
[638] SDG&E Comments at 4.
[639] EEI Comments at 17; Exelon Comments at 20.
[640] Indicated PJM Transmission Owners Comments at 17.
[641] *Id.* at 2–3; Entergy Comments at 15.

safety and reliability.[642] Entergy lists several risks from the use of emergency ratings, including creep, elongation, and loss of conductor strength as well as the fact that several factors that determine emergency ratings cannot be known in advance, such as pre-load current, pre-load temperature, contingency current, and theoretical contingency steady state temperature.[643] According to EPRI, there are conditions when emergency ratings cannot be safely used, including when other parts of the circuit are already overloaded or when the conductor would be compromised or is too old.[644] Entergy states that emergency ratings are risker than, and have a significantly greater potential to damage transmission equipment than, the use of AARs; therefore, Entergy contends, emergency ratings should be used for a short-term basis, on a limited number of facilities, and carefully monitored.[645] Exelon states that emergency ratings are acceptable for a short duration, but warns that regular excessive loading will impact a facility's useful life.[646]

280. NRECA/LPPC argues that emergency ratings may not be applicable, beneficial, or sustainable for all transmission lines.[647] Indicated PJM Transmission Owners note that there is a balance between the benefits of emergency ratings and the negative impacts of overuse or misuse of emergency ratings.[648] Indicated PJM Transmission Owners claim that the use of emergency ratings may reduce costs to consumers in some short-term cases but there is no evidence to support savings in the long term and instead their use will likely increase transmission costs.[649] PacifiCorp asserts that implementing requirements for emergency ratings on equipment other than transmission lines would require voluminous amounts of data and additional databases and personnel.[650] EEI states that universal use of seasonal and emergency ratings may provide only a negligible improvement beyond current transmission line ratings.[651] BPA asserts that it currently operates to its maximum operating temperature limits, and therefore would see no increase in capacity from the use of emergency ratings.[652] Dominion states that it does not use emergency ratings for ATC calculations on the Dominion Energy South Carolina system because emergency ratings are for short durations and specific circumstances.[653]

281. On the other hand, PacifiCorp states that it has seen no detriment to reliability from using emergency ratings for their transmission lines for over a decade.[654] WAPA states that using emergency ratings for short durations does not pose too much risk to the integrity and condition of the device.[655]

282. Several commenters note methods to manage the impact of emergency ratings on equipment. MISO recommends that the Commission allow transmission owners to establish reasonable and supported reliability margins where higher emergency ratings are established such as: (1) A safety margin to ensure the transmission line rating is less than the relay trip rating and maximum power transfer rating; and (2) allowing defined, reasonable limits on the duration and frequency of emergency ratings.[656] Potomac Economics argues that emergency ratings are designed to permit temporary use without equipment damage, such as significant annealing, and states that if post-contingent responses are in question, RTOs/ISOs can and do develop special operating guides to specify the operating conditions required to use emergency ratings and maintain reliability.[657] Potomac Economics contends that transmission owners should continue to have the authority and responsibility to determine reliable emergency ratings, but states that vague or general concerns should not forestall requirements to provide emergency ratings for most facilities.[658] Tangibl also notes that sag limitations can be addressed in some cases.[659]

283. Several commenters identify benefits of emergency ratings use, including increased transfer capability and relieving congestion, which can be a valuable reliability tool[660] and also lead to lower prices for customers.[661] Several other commenters point to more efficient use of the transmission system as a result of emergency ratings.[662] Potomac Economics' analysis, for example, found the potential for $48.1 million in 2019 and $49.5 million in 2020 in savings in MISO alone that could have been realized by using emergency ratings for facilities for which only normal ratings were provided.[663]

284. Indicated PJM Transmission Owners express concern with Potomac Economics' emergency rating cost and benefit analysis, though, noting the absence of increased operations, maintenance, and capital costs associated with running the system at emergency conditions.[664] MISO Transmission Owners similarly express concern with Potomac Economics' analysis and state that the Commission should not rely on that analysis, including estimates that the lack of unique emergency ratings by some transmission owners in MISO contributed to $62–68 million in extra congestion costs.[665]

285. In its reply comments, Potomac Economics contends that their estimations are conservative and emphasize the importance of using emergency ratings, since the cost savings are comparable to the benefits of AARs.[666] Potomac Economics also notes that requirements to implement emergency ratings would still be placed on transmission owners, and they retain discretion in setting emergency ratings based on reliability, subject to transparency and their reasonableness.[667] The SPP MMU states that accurate emergency ratings would make transmission congestion more uniformly defined throughout the footprint, thus helping reduce congestion and creating more uniform prices.[668] Potomac Economics argues that emergency ratings provide additional benefits beyond more efficient use of the transmission system and enhanced reliability, including increased operational awareness for RTOs/ISOs and other transmission providers regarding the capability of the transmission facilities.[669] New England State Agencies argue that accurate emergency ratings could prevent unnecessary curtailment of generation, and in extreme circumstances, avoid

[642] NRECA/LPPC Comments at 25; Entergy Comments at 13.

[643] Entergy Comments at 13–14.

[644] EPRI Comments at 7.

[645] Entergy Comments at 11.

[646] Exelon Comments at 22–23.

[647] NRECA/LPPC Comments at 25.

[648] Indicated PJM Transmission Owners Comments at 3.

[649] *Id.* at 15–17.

[650] PacifiCorp Comments at 5.

[651] EEI Comments at 4.

[652] BPA Comments at 7.

[653] Dominion Comments at 13.

[654] PacifiCorp Comments at 4.

[655] WAPA Comments at 8.

[656] MISO Comments at 26.

[657] Potomac Economics Comments at 14.

[658] *Id.* at 14.

[659] Tangibl Comments at 5.

[660] EDFR Comments at 6.

[661] ISO–NE Comments at 10; New England State Agencies Comments at 21; PacifiCorp Comments at 4; Potomac Economics Comments at 8, 10; WAPA Comments at 8.

[662] Tangibl Comments at 5; EDFR Comments at 6; ACP Comments at 16–17.

[663] Potomac Economics Comments at 8.

[664] Indicated PJM Transmission Owners Comments at 16.

[665] MISO Transmission Owners Comments at 43–44.

[666] Potomac Economics Reply Comments at 6–7.

[667] *Id.* at 11.

[668] SPP MMU Comments at 13.

[669] Potomac Economics Comments at 8, 10.

shedding load.[670] R Street Institute similarly contends that the benefits of emergency ratings go beyond the production cost savings estimated by Potomac Economics and include avoided customer outages.[671] R Street Institute notes that the cost of additional wear must consider the frequency and duration of emergency rating use, which is usually uncommon and brief.[672] EPRI contends that emergency ratings will provide less benefits when AARs or DLRs are already used because the starting temperature of the conductor may be higher than under static ratings.[673]

286. ACPA/SEIA state that emergency ratings are important to ensure safe operating conditions and because they often determine the loading allowed on constrained facilities even during normal conditions.[674] Tangibl also contends that unique emergency ratings may reveal potential low-cost system upgrades, allow more efficient transmission planning, reduce the time and cost of interconnection studies, and reduce barriers to the development of new generation.[675] Additionally, Tangibl notes that when unique emergency ratings are not used, it potentially causes needless curtailments for renewable energy projects.[676] R Street Institute contends that emergency ratings should be required regardless of RTO/ISO participation, to avoid a disincentive to RTO/ISO membership, and that inaccurate emergency ratings are unjust and unreasonable.[677] R Street Institute recognizes that the record on emergency ratings is sparse and that implementing emergency ratings may be prone to operator error, but notes that they are sometimes used implicitly during emergency conditions.[678]

287. Almost all transmission owners that discussed emergency ratings in their comments agree that emergency ratings should be used judiciously for reliability reasons, and not regularly for economics, to access additional transfer capability.[679] Entergy states that emergency ratings can be used only in real-time operations and should not be used in markets.[680] Indicated PJM Transmission Owners agree with the NOPR statement that emergency ratings allow for higher operating limits, and thus, more efficient system commitment and dispatch solutions, but argues that emergency ratings should be used only during emergencies and not to increase capacity during normal operating conditions due to the risks of wear and additional costs.[681] Dominion and EEI advocate for using emergency ratings only on an as-needed basis.[682] Exelon contends that the benefits of using emergency ratings under emergency conditions outweigh the costs.[683]

288. Potomac Economics argues that the Commission should clarify that the unique emergency ratings be applied for contingent constraints, stating that approximately half of the potential benefits and reduced production costs of the rulemaking could be lost without such a clarification.[684] New England State Agencies and OMS agree that accurate emergency ratings could provide important benefits.[685] However, New England State Agencies argue that more information is needed.[686]

289. Regarding implementation, PacifiCorp states that the ability to use emergency ratings in TTC on path ratings [687] is more complex than being able to calculate them because this requires contingency analysis.[688] Entergy states that emergency ratings implementation is complicated by the thermal time constraint being different for all conductors based on size and construction.[689]

290. ITC asserts that AARs should be used for both normal ratings (pre-contingency operations) and emergency ratings (post-contingency operations) because congestion is often caused by projected post-contingency flows.[690] EDFR and Industrial Customer Organizations state that, where appropriate, emergency ratings could be combined with DLRs for additional benefits.[691] Similarly, PG&E supports considering the benefits of AARs for both normal and emergency ratings.[692] By contrast, ACPA/SEIA encourage the consideration of seasonal line rating information in developing emergency ratings, similar to the framework for using seasonal line ratings for long-term transmission service.[693]

291. ISO–NE states that an update to the overall transmission line rating methodology to include AARs may also necessitate the need for new emergency ratings based on those AARs.[694] Potomac Economics supports a requirement that transmission owners calculate and use AARs based on emergency ratings for contingency constraints.[695] NYTOs state that having normal and emergency ratings could preempt the need to establish an AAR mandate on all transmission lines.[696]

b. Commission Determination

292. Based on the record developed in this proceeding, we are persuaded that it is appropriate to adopt certain requirements for emergency ratings. Whether and how a transmission owner establishes emergency ratings is important because emergency ratings are a critical input into determining transfer capability, both during normal operations and during post-contingency operations. There is a significant record of transmission owners and transmission providers already using emergency ratings.[697] For example, Exelon notes that it already calculates emergency ratings for its transmission facilities and that the benefits of using emergency ratings during emergencies outweigh the costs of establishing them.[698] There is also an extensive record on the role of emergency ratings in ensuring reliable and efficient operations. Specifically, transmission owners and transmission providers report benefits from implementing emergency ratings including increased transmission capacity,[699] additional time to respond to contingencies,[700] lower costs to consumers,[701] and help

[670] New England State Agencies Comments at 21.

[671] R Street Institute Comments at 8.

[672] *Id.* at 8.

[673] EPRI Comments at 8.

[674] ACPA/SEIA Comments at 16–17.

[675] Tangibl Comments at 4–6.

[676] *Id.* at 5–6.

[677] R Street Institute Comments at 5–7.

[678] *Id.* at 3, 7.

[679] *See, e.g.,* Dominion Comments at 13; Entergy Comments at 2; Exelon Comments at 22; Indicated PJM Transmission Owners Comments at 17.

[680] Entergy Comments at 2.

[681] Indicated PJM Transmission Owners Comments at 15–16.

[682] Dominion Comments at 13; EEI Comments at 16–17.

[683] Exelon Comments at 22.

[684] Potomac Economics Comments at 4.

[685] New England State Agencies Comments at 21; OMS Comments at 13–14.

[686] New England State Agencies Comments at 22.

[687] The NERC Glossary defines ''Rated System Path Methodology,'' which includes an initial TTC from which the ATC is derived and is generally reported as specific transmission path capabilities. NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[688] PacifiCorp Comments at 5.

[689] Entergy Comments at 13–14.

[690] ITC Comments at 12.

[691] EDFR Comments at 6; Industrial Customer Organizations Comments at 27.

[692] PG&E Comments at 12.

[693] ACPA/SEIA Comments at 17.

[694] ISO–NE Comments at 10–11.

[695] Potomac Economics Reply Comments at 8.

[696] NYTOs Comments at 11.

[697] *See, e.g.,* APS Comments at 7; Dominion Comments at 4; Entergy Comments at 1; EEI Comments at 16; Exelon Comments at 22; Indicated PJM Transmission Owners Comments at 2; PacifiCorp Comments at 4; PG&E Comments at 12; SDG&E Comments at 3; WAPA Comments at 8.

[698] Exelon Comments at 22.

[699] ISO–NE Comments at 10; PacifiCorp Comments at 4.

[700] APS Comments at 7.

[701] ISO–NE Comments at 10; PacifiCorp Comments at 4; WAPA Comments at 8.

maintaining reliability and avoiding unnecessary load shed.[702] Emergency ratings have an extensive record of use and are a more accurate representation of the flow limits over shorter timeframes and are thus necessary to ensure just and reasonable wholesale rates.

293. First, as set forth under ''Obligations of Transmission Provider'' in *pro forma* OATT Attachment M, we require that transmission providers use emergency ratings for contingency analysis in the operations horizon and in post-contingency simulations of constraints. We define an ''emergency rating'' in *pro forma* OATT Attachment M as a transmission line rating that reflects operation for a specified, finite period, rather than reflecting continuous operation. An emergency rating may assume acceptable loss of equipment life or other physical or safety limitations for the equipment involved.[703] We adopt this emergency ratings requirement to ensure the accuracy of transmission line ratings, particularly during emergency operations. Emergency ratings are a critical input into determining transfer capabilities and congestion costs during emergency operations and can provide temporarily expanded operating flexibility to allow higher loading and higher operating limits on transmission facilities for a short time during unexpected tight system conditions, emergency events, or contingencies. Emergency ratings are also a critical input into the scheduling of transactions that can be executed under real-time operating constraints. Because real-time, unforeseen contingencies can occur that stress the system's transfer capabilities (*e.g.,* forced outages on generation or transmission), transmission providers operate their systems in normal conditions to be able to withstand such contingencies. Should such a contingency occur, transmission providers are thus prepared to redispatch resources. Dispatching and scheduling resources to accommodate such contingency events can cause a large increase in wholesale rates, due to congestion costs. More accurate emergency ratings (like more accurate transmission line ratings generally) will better reflect the near-term transfer capability of the system, more accurately reflect the cost of serving load, and avoid unnecessary transient congestion costs. For these reasons, we adopt the emergency ratings requirement as set forth in *pro forma* OATT Attachment M.

294. Second, we require that transmission providers use uniquely determined emergency ratings. Under this requirement, transmission providers must use emergency ratings that transmission owners determine uniquely from their determination of normal ratings.[704] This requirement ensures that transmission providers use emergency ratings that reflect that a transmission facility's transfer capabilities may differ for shorter periods of time; that is, transfer capabilities differ if calculated for use over a short period of time (*i.e.,* for emergency ratings) rather than for use over an indefinite period of time (*i.e.,* for normal ratings).

295. In response to commenters stating that the Commission should not require that emergency ratings be unique from normal ratings, we clarify that we are not requiring that emergency ratings be arbitrarily higher than normal ratings. Instead, we are requiring that emergency ratings be uniquely *determined,* meaning determined based on assumptions that reflect the specified, finite duration of emergency ratings, as distinct from the assumptions used to calculate normal ratings, which reflect a power transfer capability that can be maintained indefinitely. Consistent with the Commission's statements in the NOPR,[705] transmission owners will have discretion to determine the procedure used to calculate emergency ratings, so long as they do so in accordance with good utility practice and the other requirements in *pro forma* OATT Attachment M. Accordingly, a transmission provider may use an emergency rating equal to a normal rating, provided that both ratings were calculated uniquely using appropriate assumptions, sound engineering judgment, and good utility practice.

296. We agree with PacifiCorp's comment that the ability to use uniquely determined emergency ratings requires real-time and near real-time horizons contingency analysis tools that can handle variable limits (*i.e.,* normal rating for normal operating conditions, and emergency ratings in contingency conditions) and perform iterative simulations to calculate TTC on path ratings.[706] Such contingency analysis is already required under NERC Reliability Standards, including, *e.g.,* Reliability Standards TOP–001 and IRO–008, which require transmission providers and reliability coordinators to perform a real-time assessment at least once every 30 minutes to ensure that instability, uncontrolled separation, or cascading outages that could adversely impact the reliability of the interconnection will not occur.[707] Modifications to future-looking cases to increase flow, and to iteratively run contingency analysis, is common practice since system loading conditions change throughout the day. However, we agree that these tools require additional data points and simulation process modifications to observe the emergency rating of bulk electric system facilities, if not currently used.

297. Third, we require that emergency ratings also incorporate an adjustment for ambient air temperature and for daytime/nighttime solar heating, consistent with the AAR requirements for normal ratings. Based on the record, we find that the calculation of AARs for both normal and emergency ratings will enhance the accuracy of transmission line ratings and ensure just and reasonable wholesale rates. As commenters point out, congestion is often caused by post-contingency transmission flows that are modeled and managed as part of normal operations, and thus not requiring AARs to be applied to emergency ratings would inaccurately constrain even normal operations and prevent significant potential benefits of AAR implementation. Finally, we note that applying AARs to emergency ratings is consistent with the implementation of AARs in PJM, where nearly all emergency ratings are dependent on ambient air temperatures.[708]

[702] Exelon Comments at 22.

[703] The NERC Glossary defines an ''Emergency Rating'' as: ''[t]he rating as defined by the equipment owner that specifies the level of electrical loading or output, usually expressed in megawatts (MW) or Mvar or other appropriate units, that a system, facility, or element can support, produce, or withstand for a finite period. The rating assumes acceptable loss of equipment life or other physical or safety limitations for the equipment involved.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[704] As clarified below, consistent with our determination in Section IV.B.2.b.iii. on the role of the transmission owner and transmission provider in AAR implementation, transmission owners, not transmission providers, are responsible for calculating emergency ratings.

[705] NOPR, 173 FERC ¶ 61,165 at P 46 n.57.

[706] PacifiCorp Comments at 5–6.

[707] Reliability Standard TOP–001–5 R13 requires a transmission operator to perform a Real-Time Assessment at least once every 30 minutes. According to the NERC Glossary, a ''Real-Time Assessment'' is: ''[a]n evaluation of system conditions using Real-time data to assess existing (pre-Contingency) and potential (post-Contingency) operating conditions. The assessment shall reflect applicable inputs including, but not limited to: . . . Facility Ratings; and identified phase angle and equipment limitations.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[708] *See* PJM Ratings Information, *https://www.pjm.com/markets-and-operations/etools/*

298. As with the application of AARs to normal ratings, transmission owners have discretion to determine which specific electric system equipment has emergency ratings that are affected by ambient air temperatures, consistent with good utility practice and the requirements of *pro forma* OATT Attachment M.

299. Consistent with our determination in Section IV.B.2.b.iii on the role of the transmission owner and transmission provider in AAR implementation, we clarify that transmission owners, not transmission providers, are responsible for calculating emergency ratings. This responsibility is set forth in the NERC Reliability Standards, as well as in RTO/ISO foundational documents.[709] Nothing in this final rule changes that responsibility. In the non-RTO/ISO regions, this is generally not a concern because the transmission provider is usually the transmission owner. However, in the RTO/ISO regions, there is a distinction between transmission owners and transmission providers. Thus, in order to comply with this final rule, RTOs/ISOs—the transmission provider with the OATT on file—will need to rely on their member transmission owners to calculate emergency ratings and provide them to the RTO/ISO.[710] Additionally, unlike normal transmission line ratings, emergency ratings correspond to a specific duration. Thus, the duration of each uniquely determined emergency rating determined by a transmission owner must be specified and communicated by the transmission provider, consistent with our determination on the transparency and reporting requirements of transmission line ratings in Section IV.G.3 below.

300. Where the transmission provider is not the transmission owner (*e.g.,* RTOs/ISOs), we require the transmission provider to explain in its compliance filing, as part of its implementation of new *pro forma* OATT Attachment M, through what mechanism (tariff, membership agreement, etc.) the transmission owner has the obligation for making and communicating to the transmission provider the timely calculations and determinations related to emergency ratings (including any discretion in calculations).

301. In response to commenter requests for a minimum, maximum, or standardized emergency rating duration, we recognize that transmission owners use a range of durations and find that transmission owners are best situated to make judgments on the appropriate emergency rating duration based on the technical capabilities of the installed equipment, consistent with good utility practice, using sound engineering judgment, manufacturer guidance, and equipment reliability experience.

302. We recognize, as pointed out by some commenters, that emergency ratings can affect the safe operation and useful life of transmission facilities. However, as several commenters explain, most transmission equipment has the ability to withstand high currents for short periods of time without sustaining damage.[711] The requirement to implement uniquely determined emergency ratings simply requires that emergency ratings calculations be based on this existing ability, where it exists. In response to comments from MISO that the Commission allow transmission owners to establish reasonable and supported reliability margins,[712] as the Commission stated in the NOPR, transmission providers that find they need a reliability margin have existing Commission-approved mechanisms, such as the transmission reliability margin component of ATC, for establishing such a margin on a consistent and transparent basis.[713]

303. In response to Indicated PJM Transmission Owners and MISO Transmission Owners' concerns with Potomac Economics' analysis, we note that our findings in this final rule are not solely based on Potomac Economics' analysis. Rather, our rationale for adopting the requirement to implement uniquely determined emergency ratings, similar to the AAR requirements discussed above, is based on the finding that implementing uniquely determined emergency ratings will ensure that transmission line ratings are more accurate, that more accurate transmission line ratings will ensure wholesale rates more accurately reflect the cost of the wholesale service being provided, and, thus, that those wholesale rates are just and reasonable.

3. Equipment for Which Emergency Ratings Must Be Calculated

a. Comments

304. Exelon and APS note that they can and do calculate emergency ratings on equipment other than conductors and transformers.[714] APS notes that its use of emergency ratings often does not impact, and typically is not limited by, substation equipment.[715] Entergy states that emergency ratings cannot be used on many components of facilities.[716] However, Entergy explains that autotransformers can have emergency ratings about 25 to 30% over their normal rating for up to two hours.[717] Tangibl notes that different equipment may be limiting under different operating scenarios and that, while secondary and control components often have identical normal and emergency ratings, it is rare for relays to be the limiting element in PJM winter ratings.[718]

b. Commission Determination

305. As we determined in Section IV.A above, emergency ratings, like all transmission line ratings, must incorporate a set of electrical equipment ratings that collectively operate as a single electric system element (*e.g.,* transformers, relay protective devices, terminal equipment, and series and shunt compensation devices), and the most limiting component from that set will determine the transmission line rating. Consistent with our determination on the use of AARs in Section IV.B.1 above, we find that transmission providers must use uniquely determined emergency ratings on all conductors and all relevant transmission equipment, in order to ensure that transmission line ratings are accurate.

G. Transparency

1. NOPR Proposal

306. The Commission proposed in the NOPR to require transmission owners to share transmission line ratings for each period for which they are calculated and transmission line rating methodologies with their transmission provider(s), and, in regions served by an RTO/ISO, also with the market monitor(s) of that RTO/ISO.[719] The Commission preliminarily found that this requirement would afford transmission providers and market monitors more operational and situational awareness.[720]

307. The Commission also acknowledged that sharing transmission line ratings and transmission line rating methodologies with other, additional, interested parties would allow for

oasis/system-information/ratings-information.aspx (last visited Nov. 1, 2021).

[709] *See, e.g.,* Reliability Standards FAC–008–5, Requirement R3 and FAC–008–5, Requirement R6.

[710] *See supra* note 326.

[711] *See, e.g.,* Entergy Comments at 6–8; BPA Comments at 7; Exelon Comments at 21–23.

[712] MISO Comments at 26.

[713] NOPR, 173 FERC ¶ 61,165 at P 104.

[714] APS Comments at 7; Exelon Comments at 21.

[715] APS Comments at 7.

[716] Entergy Comments at 7.

[717] *Id.* at 7.

[718] Tangibl Comments at 3.

[719] NOPR, 173 FERC ¶ 61,165 at P 125.

[720] *Id.* P 126.

greater transparency and, in the case of transmission providers, may aid efforts to manage congestion along mutual seams and may be beneficial for the study of affected systems during the interconnection process.[721] The Commission thus sought comment on whether to require transmission owners to share, upon request, their transmission line ratings and transmission line rating methodologies with transmission providers other than the transmission owner's own transmission provider. The Commission also sought comment on whether to require transmission owners to make their transmission line ratings and transmission line rating methodologies available to other interested stakeholders, including by posting information on their OASIS page or other password-protected online forums.[722]

308. While the Commission did not propose new auditing requirements in the NOPR, the Commission reiterated that it would continue to conduct reviews of transmission line ratings as a component of broader tariff compliance audits.[723]

2. Comments

a. Increased Transparency Requirements for Transmission Line Ratings Methodologies

309. Many commenters express general support for the Commission's efforts to increase transparency surrounding transmission line ratings and methodologies.[724] MISO Transmission Owners argue that the transparency proposal in the NOPR seems reasonable, but should not be broadened, explaining that the transparency proposal in the NOPR balances the need for transparency for RTOs/ISOs and market monitors with the need for confidentiality.[725] Industrial Customer Organizations state that transparency is a prerequisite for stakeholders to independently evaluate the potential reliability benefits of more accurate transmission line ratings, for the Commission to ensure just and reasonable rates, to reduce the incentives and opportunities for transmission owners to understate or manipulate transmission line ratings, and for transmission providers to identify cost-effective congestion management solutions.[726] EDFR claims that increased transparency may result in more efficient and standardized transmission line rating methodologies while identifying outliers more quickly and that transparency encourages the use of a balanced, reasonable transmission line rating methodology, which should result in more accurate transmission line ratings.[727] OMS states that the Commission's regulations require transmission line rating transparency.[728] OMS further contends that transparency should be the default position and should only be restricted where demonstrably necessary.[729] EPSA states that transparent collection and disclosure of quality data is the lynchpin of an efficient transmission system.[730] Certain TDUs state that improved transparency of transmission line ratings processes will ultimately lead to a more efficient and cost-effective grid.[731] IID supports the Commission's proposed requirements and encourages the Commission to consider how such information can be shared in a timely manner, such that adjacent operators and users of the grid can account for current transmission line ratings in their weekly and day-ahead planning.[732]

b. Sharing Transmission Line Ratings and Methodologies With Transmission Providers and Market Monitors

310. Nearly all commenters support the proposal in the NOPR to require transmission owners to share transmission line ratings and methodologies with the relevant transmission provider and, in the case of transmission providers that are RTOs/ISOs, the relevant market monitor.[733] AEP and Exelon note that PJM posts actual transmission line ratings publicly.[734]

311. DC Energy contends that implementing AARs and DLRs and requiring RTOs/ISOs to post the transmission line ratings used for each constraint-binding interval for both the day-ahead and real-time markets is not an infeasible or unduly burdensome task.[735] DC Energy notes that ERCOT publishes every transmission line rating used for every constraint's binding interval for both its day-ahead and real-time markets on its market information system portal accessible by all market participants.[736]

312. Potomac Economics contends that the information shared must include the limiting element for each transmission line rating and the inputs necessary to replicate the transmission line rating calculation to monitor for transmission withholding, and that such information should be maintained in a database accessible by those with a role in monitoring, operating, and planning the transmission system.[737] EDFR supports a requirement that transmission owners provide information identifying the transmission line's limiting element.[738] New England State Agencies agree with the reforms proposed in the NOPR with a minimum of requiring disclosure of transmission line ratings and methodologies to all grid operators and market monitors.[739] New England State Agencies state such a requirement would allow verification of the existing transmission line ratings by independent authorities.[740] New England State Agencies assert that providing data to the RTO/ISO market monitor would allow the market monitor to verify the quality and accuracy of the information.[741] New England State Agencies contend that transmission owners may have an incentive to be overly conservative with transmission line ratings methodologies because there is no financial incentive for more efficient operation of existing transmission assets and there is significant incentive for transmission owners to build new transmission lines and substations and include these new assets in their rate base.[742] Because NYISO and PJM already require similar data disclosure, New England State Agencies claim that transmission owners can comply without undue difficulty with the proposed requirements and that there is no actual evidence in the record of any increased litigation in those regions where disclosure is common.[743]

313. NRECA/LPPC caution that their members do not believe the Commission

[721] *Id.* P 129.

[722] *Id.*

[723] *Id.* P 130.

[724] MISO Transmission Owners Comments at 19; Entergy Comments at 16; NRECA/LPPC Comments at 27–28; AEP Comments at 5; DC Energy Comments at 5; IID Comments at 7.

[725] MISO Transmission Owners Comments at 36.

[726] Industrial Customer Organizations Comments at 28–29.

[727] EDFR Comments at 7.

[728] OMS Comments at 17 n.57 (citing 18 CFR 37.6).

[729] OMS Reply Comments at 3–4.

[730] EPSA Comments at 3.

[731] Certain TDUs Comments 8.

[732] IID Comments at 7.

[733] AEP Comments at 8; CAISO DMM Comments at 3, 7–8; OMS Comments at 16; Exelon Comments at 23–24; DC Energy Comments at 5; Potomac Economics Comments at 16; IID Comments at 7; New England State Agencies Comments at 17–19; R Street Institute Comments at 3; SPP MMU Comments at 5; TAPS Comments at 23.

[734] AEP Comments at 8; Exelon Comments at 23–24.

[735] DC Energy Comments at 5.

[736] *Id.*

[737] Potomac Economics Comments at 16–17.

[738] EDFR Comments at 6.

[739] New England State Agencies Comments at 19.

[740] *Id.*

[741] *Id.* at 17–18.

[742] *Id.* at 18.

[743] *Id.* at 20.

should require RTOs/ISOs to develop and maintain comprehensive databases to document the limiting element of all transmission circuits and facilities in their regions, arguing that the benefit to consumers is unclear and that the NOPR does not support such a requirement.[744]

314. Only two commenters object to the proposed transparency requirements. Dominion states that requiring that transmission line ratings and methodologies be disclosed to the RTO/ISO market monitor is unwarranted because transmission line ratings are primarily reliability tools and are effectively overseen by NERC.[745] Dominion states that it already provides transmission line ratings to PJM and PJM makes them publicly available.[746] While Dominion does not object to continuing these practices, Dominion does object to providing its transmission line rating methodology to the PJM market monitor, which Dominion argues has no oversight over the operation of the PJM transmission system.[747] Separately, ITC argues that requirements to make all transmission line ratings available to the RTOs/ISOs, market monitor, and other stakeholders would be unduly burdensome.[748] ITC states that only a small number of transmission lines contribute to congestion and that regular reporting may increase the probability of inconsistencies between ITC's internal databases and those used for external data requests.[749] ITC therefore requests that the final rule require transmission owners to provide such data only upon request. ITC argues that RTOs/ISOs and market monitors should use shared transmission line ratings for informational purposes only and not for standardization purposes.[750]

c. Transmission Providers Sharing Transmission Line Ratings and Methodologies With Any Transmission Provider

315. Several commenters support a requirement for transmission providers to share, upon request, transmission line ratings and methodologies with any transmission provider.[751] APS states that this sharing of information is essential to ensure security in APS's transmission operator area.[752] MISO states that, in addition to the proposed transparency requirements in the NOPR, sharing the same information with neighboring transmission providers that share a seam with MISO is needed.[753] MISO asserts that such sharing of these transmission line ratings would be necessary for both tie lines and interregional congestion management, useful for reliability studies involving the neighboring regions, consistent with other coordination practices, and subject to confidentiality restrictions to control dissemination.[754] Similarly, Vistra argues that the Commission should clarify that transmission providers must share AAR information with neighboring transmission providers because transmission line rating calculations typically consider loop flows.[755] Vistra explains that, logistically, this information sharing could take many forms, including direct data pushes between transmission providers or publishing such information on OASIS sites and that the Commission need not dictate a particular information sharing method.[756]

d. Sharing Transmission Line Ratings and Methodologies With Other Entities

316. Some commenters support requiring the sharing of transmission line ratings and methodologies with entities other than transmission providers and market monitors.[757] For example, WATT contends that transmission line rating methodologies need to be shared with all transmission customers.[758] R Street Institute argues that the NOPR proposal would provide insufficient transparency and that, ideally, transmission line ratings and methodologies would be available to a broader set of market participants and state commissions as well.[759] OMS similarly asserts that all stakeholders should be able to see transmission line ratings and that the market monitor and MISO should be granted complete transparency into the methods used to create these transmission line ratings, recognizing that the regional entities are strictly focused on reliability.[760]

317. TAPS urges the Commission to allow interested persons to access transmission line ratings and methodologies through password-protected interfaces, such as OASIS, such that if a transmission customer has concerns about the impact of a constraint, it should be able to obtain information on the transmission line ratings and methodologies used to establish such ratings. TAPS contends that doing so would enable transmission customers to better understand what is driving the prices that they are required to pay.[761] APS states it would not support posting transmission line ratings and methodologies on OASIS, but would support other password-protected online forums where access could be controlled.[762] To expand transmission line rating information and reduce the information gap, ACPA/SEIA suggests that there are several options, including expanding the FERC Form 715 reporting requirements or making this information available on OASIS sites.[763] DC Energy asks that the Commission require transmission owners outside of organized electricity markets to post transmission line ratings and methodologies on their OASIS pages or another password-protected online forum.[764]

318. Clean Energy Parties contend that requiring transmission owners to disclose their transmission line ratings and methodologies to RTOs/ISOs and market monitors but not share with the broader public is unduly discriminatory.[765] Exelon requests flexibility to allow transmission providers, like PJM, to publish transmission line ratings consistent with existing practices.[766] ACPA/SEIA contends that the Commissions should require that all market participants have comparable information on near-term transmission service.[767] ACPA/SEIA argues that because near-term transmission service information would only be available to transmission owners, RTOs/ISOs, and market monitors, there would be a discriminatory ''information gap,'' putting transmission customers at a disadvantage by not being able to easily identify optimal interconnection locations and not being able to understand or reproduce AAR or DLR congestion analyses.[768]

319. New England State Agencies argue that it is important to states that

[744] NRECA/LPPC Comments at 27–28.

[745] Dominion Comments at 14–15.

[746] *Id.*

[747] *Id.*

[748] ITC Comments at 13.

[749] *Id.*

[750] *Id.*

[751] APS Comments at 8; PacifiCorp Comments at 3; MISO Comments at 29; EPSA Comments at 3; Exelon Comments at 27; IID Comments at 7.

[752] APS Comments at 8.

[753] MISO Comments at 29.

[754] *Id.*

[755] Vistra Comments at 7–8.

[756] *Id.*

[757] APS Comments at 9; Clean Energy Parties Comments at 14; EPSA Comments at 3; Exelon Comments at 28–29; EDFR Comments at 7; New England State Agencies Comments at 20; OMS Comments at 16; R Street Institute Comments at 3; TAPS Comments at 24; WATT Comments at 14.

[758] WATT Comments at 14.

[759] R Street Institute Comments at 3.

[760] OMS Comments at 16.

[761] TAPS Comments at 24.

[762] APS Comments at 9.

[763] ACPA/SEIA Comments at 19–20.

[764] DC Energy Comments at 5–6.

[765] Clean Energy Parties Comments at 14.

[766] Exelon Comments at 28–29.

[767] ACPA/SEIA Comments at 19–20.

[768] *Id.* at 18–19.

have relied on competitive procurements for certain types of energy development needs to have access to transmission line ratings and methodologies.[769] According to New England State Agencies, the Commission's requirement in Order No. 1000 that transmission providers consider public policy transmission needs as part of regional transmission planning processes would be materially aided by allowing open access to transmission line ratings and similar data.[770] New England State Agencies state that password protections and non-disclosure agreements can be used in protecting confidential information in a wide variety of circumstances if there is concern about loss of confidential business information.[771]

320. Conversely, several commenters oppose further sharing beyond transmission providers and, where appropriate, market monitors. PacifiCorp states that it strongly opposes making its transmission line ratings broadly available to stakeholders or posting such information to OASIS due to the potential for reliability risks and unclear benefits.[772] MISO Transmission Owners state that there appears to be no need for transmission line ratings to be public because: (1) ATC is made available to the public; (2) transmission line ratings are only one of many inputs into ATC; and (3) ATC is made available on OASIS pages.[773] PG&E recommends against requiring transmission owners and transmission providers to post real-time transmission line ratings on their OASIS pages, noting that transmission line rating methodologies should also not be disclosed to any parties other than the Commission and other transmission providers.[774] Indicated PJM Transmission Owners argue that requiring transmission line ratings and methodologies to be made public would be unnecessary in PJM, given the existing information is made available.[775] EEI recommends that the Commission not require transmission owners and transmission providers to post real-time transmission line ratings on their OASIS pages but instead provide only the methodologies for determining AARs and seasonal line ratings.[776]

e. Auditing, Enforcement, and Litigation

321. Several commenters note that NERC already audits transmission line ratings and argue that any transmission line ratings verification or transmission line ratings auditing performed by market monitors would be unnecessary or harmful.[777] Exelon states that, were a market monitor to allege improper transmission line rating calculations which NERC has already approved, there could be dueling determinations and confusion and potential inconsistency with FPA section 215, which specifies that NERC, as the Electric Reliability Organization, is responsible for enforcing mandatory Reliability Standards.[778] Exelon, AEP, and MISO Transmission Owners allege that calculating transmission line ratings requires a degree of engineering judgment, reflective of transmission owners' operational experience, risk tolerance, and local knowledge.[779] Exelon argues that market monitors lack this knowledge.[780] AEP argues that RTOs/ISOs should have no role beyond applying submitted transmission line ratings.[781] EEI asks that the Commission emphasize that any final rule would not change the audit and enforcement construct already in place and that the audits should not specifically review the transmission line rating methodologies and assumptions.[782] MISO Transmission Owners explain that it may not present a problem for RTOs/ISOs and market monitors to identify computational transmission line ratings errors, but RTOs/ISOs and market monitors should not be permitted to second-guess transmission line rating methodologies.[783] Indicated PJM Transmission Owners explain that the functions of the PJM market monitor are limited to those items identified by Attachment M of the PJM OATT, requiring the market monitor to assess the competitiveness of the ''PJM markets, but not monitor transmission line ratings as it does not have the requisite expertise or reliability authority.[784] Indicated PJM Transmission Owners disagree with the Commission's statement that the NERC Reliability Standards may be insufficient to ensure accurate transmission line ratings.[785] Sunflower argues that the Commission should require specific measures for transmission providers to monitor the impact of AARs and seasonal line ratings on the safety and reliability of the electric system.[786]

322. Some commenters argue for further oversight and expansion of the auditing of transmission line ratings and methodologies. Potomac Economics recommends that the Commission require some form of independent oversight, verification, and monitoring of the transmission line ratings calculated and used in non-RTO/ISO areas.[787] Potomac Economics contends that it is important to clarify that transmission line rating information that underlies curtailments under transmission line ratings or joint operating agreements be available to other transmission providers, reliability coordinators, or RTOs/ISOs that are affected by the curtailments.[788] Ohio FEA recommends that PJM routinely review submitted transmission line ratings and the methodologies used in their development; otherwise, Ohio FEA continues, the benefits associated with implementing AARs may prove to be illusory if the transmission line ratings themselves are not based on objective and accurate criteria.[789] Ohio FEA insists that the PJM market monitor must be granted the authority to review transmission line ratings and take corrective actions deemed necessary if the market monitor concludes that a transmission owner's transmission line ratings are inaccurate, consistent with the market monitor's role as defined in Attachment M of the PJM OATT.[790]

323. Many commenters express concern over potential litigation regarding transmission line ratings and methodologies (though AEP states that the proposed requirements in the NOPR adequately mitigate litigation risks).[791] EEI argues that third parties should not be able to litigate or dispute transmission line ratings or methodologies.[792] Exelon caveats that its position supporting additional transparency is contingent on the Commission ensuring that the enhanced transparency does not result in constant litigation from market participants, provided such transmission line ratings

[769] New England State Agencies Comments at 20.

[770] *Id.*

[771] *Id.*

[772] PacifiCorp Comments at 4.

[773] MISO Transmission Owners Comments at 37.

[774] PG&E Comments at 12.

[775] Indicated PJM Transmission Owners Comments at 23–24.

[776] EEI Comments at 13.

[777] Exelon Comments at 24; AEP Comments at 8–9; EEI Comments at 13–14; Indicated PJM Transmission Owners Comments at 17–18.

[778] Exelon Comments at 25–26.

[779] *Id.* at 26–27; AEP Comments at 9; MISO Transmission Owners Comments at 37–38.

[780] Exelon Comments at 26–27.

[781] AEP Comments at 9.

[782] EEI Comments at 13–14.

[783] MISO Transmission Owners Comments at 37–38.

[784] Indicated PJM Transmission Owners Comments at 22–23.

[785] *Id.* at 19–21.

[786] Sunflower Comments at 4.

[787] Potomac Economics Comments at 18; *see also* Potomac Economics Reply Comments at 12.

[788] Potomac Economics Comments at 18.

[789] Ohio FEA Comments at 5–6.

[790] *Id.* at 6.

[791] AEP Comments at 10.

[792] EEI Comments at 13–14.

and calculations are reasonably accurate at reflecting a transmission facility's power transfer capability, as transmission line ratings are fundamentally a reliability concept.[793] MISO Transmission Owners argue that transparency requirements beyond those proposed in the NOPR that result in an increase in disputes and litigation surrounding transmission line ratings and/or methodologies would reduce the benefits of the proposed reforms. MISO Transmission Owners therefore contend that the Commission should clarify its statement in the NOPR that the proposed increased transparency will allow RTOs/ISOs and market monitors to verify transmission line ratings.[794] Similarly, Indicated PJM Transmission Owners warn that further transparency disclosure requirements would result in costly and time consuming litigation, and thereby increased burdens on transmission owners and the Commission, as a result of arguments from market participants soliciting changes designed to benefit themselves and negatively affect others. Indicated PJM Transmission Owners stress that this would be inappropriate because transmission line ratings are complex calculations, based on many different factors, including local assets, engineering judgment, and how assets are traditionally operated, and therefore litigation with the Commission would be inappropriate.[795] ITC requests that the final rule clarify that incorrect transmission line ratings due to changes in weather or unintentional errors in data that were submitted in good faith should not create additional legal or regulatory liability for transmission owners. ITC states that it would not benefit from such errors since it is primarily concerned with reliability and does not participate in markets.[796] Conversely to these commenters, AEP expresses that the Commission's NOPR strikes the right balance between providing transparency without creating risks of unnecessary litigation for transmission owners if transmission line ratings cannot be precisely replicated by third parties.[797] Furthermore, DC Energy contends that the need for disclosure outweighs transmission owners' claims of confidentiality or fear of potential litigation.[798]

f. Posting of Exceptions to OASIS

324. EPSA asks that transmission providers be required to disclose (potentially via OASIS) which transmission lines they deem as not benefitting from an AAR or seasonal line rating. EPSA also asks that transmission providers be required to disclose the reasons for making those determinations to thereby enable RTOs/ISOs and market monitors to verify those decisions. Moreover, EPSA asks that these decisions be evaluated at least every five years to ensure AAR-exempt transmission lines should continue to qualify for exceptions.[799]

g. Other Transparency Topics

325. ISO–NE states that to comply with the NOPR's proposed transparency requirements, it would need to modify Planning Procedure No. 7, Procedures for Determining and Implementing Transmission Facility Ratings (PP7) as New England Transmission Owners are required to follow the PP7 procedures to determine transmission line rating methodologies.[800] ISO–NE requests that the Commission allow for sufficient time for the PP7 changes to make their way through the applicable processes for the transmission owners to implement those changes and then provide new transmission line ratings to ISO–NE and its market monitor in the manner contemplated in the NOPR.[801]

326. NRECA/LPPC recommend that any measures in the final rule to improve the transparency of transmission line ratings should be consistent with the requirements of existing mandatory NERC Reliability Standards, including Critical Infrastructure Protection (CIP) Standards, as well as requirements to protect Critical Electric/Energy Infrastructure Information (CEII).[802]

327. OMS suggests that the Commission could revisit the data it currently collects in FERC Form 715 to better analyze how the data already being collected can be used to understand some transmission owners' transmission line ratings and methodologies but not others.[803] OMS also suggests that the Commission consider a comment and response process between transmission owners, transmission providers, and market monitors to provide additional oversight into the appropriateness of transmission line ratings throughout the bulk power system.[804]

328. Clean Energy Parties contend that RTOs/ISOs should be required to discuss with stakeholders and report to the Commission how winter capacity deliverability differs from summer and identify possible reliability improvements or cost savings arising from those differences.[805]

329. Some commenters assert a connection between transparency around transmission line ratings and FTR markets. EDFR states that transparency provides market participants with a better understanding of how transmission line ratings could change over time while helping to anticipate congestion, hedge congestion, and participate in the FTR markets.[806] DC Energy states that market participants, particularly those that purchase and sell FTRs, need transparency in order to critically analyze and address market inefficiencies.[807] DC Energy contends that FTR market participants will require transparent transmission line rating and methodology information in order to accurately forecast congestion.[808] DC Energy asserts that transparency is essential for the transition to AARs and DLRs because, without adequate transparency, AARs and DLRs could actually make congestion hedges less accurate. This is because, according to DC Energy, AARs and DLRs will cause transmission line ratings to change without advance notification and, in times of adverse system conditions, AARs and DLRs will more accurately reflect the fact that less transfer capability is available.[809]

3. Commission Determination

330. Upon consideration of the comments received, we adopt the NOPR proposal to require public utility transmission owners to share their transmission line ratings for each period for which they are calculated and transmission line rating methodologies with their transmission providers and with market monitors in RTOs/ISOs. We acknowledge situations in which the transmission owner and transmission provider are the same entity, and we expect that in such cases compliance with this final rule's transparency requirements will be simple in the sense that the transmission provider will not have to rely on a separate transmission

[793] Exelon Comments at 29.

[794] MISO Transmission Owners Comments at 37–38 (citing NOPR, 173 FERC ¶ 61,165 at P 127).

[795] Indicated PJM Transmission Owners Comment at 24.

[796] ITC Comments at 16.

[797] AEP Comments at 9–10.

[798] DC Energy Comments at 5.

[799] EPSA Comments at 4.

[800] ISO–NE Comments at 11.

[801] *Id.* at 11.

[802] NRECA/LPPC Comments at 3.

[803] OMS Comments at 17.

[804] *Id.*

[805] Clean Energy Parties Comments at 12.

[806] EDFR Comments at 7.

[807] DC Energy Comments at 3–4.

[808] *Id.* at 4.

[809] *Id.* at 5.

owner to provide the transmission line ratings and methodologies. We also adopt three additional transparency requirements. First, we require each transmission provider to share transmission line ratings and methodologies with any transmission provider(s) upon request. Second, we require each transmission provider to maintain a database of its transmission line ratings and methodologies on the transmission provider's OASIS site, or other password-protected website. We require that this database be in such a form that can be accessed by all parties with OASIS access or access to the password-protected website. The database should archive and allow for querying of all current transmission line ratings and all transmission line ratings used in the past five years. Third, we require transmission providers to post on OASIS, or other password-protected website, which transmission lines qualify for an exception to the AAR or seasonal line rating requirements and the reasons why such transmission lines qualify for an exception.

a. Transmission Owners Sharing Ratings and Methodologies With Transmission Providers and, Where Applicable, Market Monitors

331. We find that requiring public utility transmission owners to share transmission line ratings and methodologies with their transmission providers and, in RTOs/ISOs, market monitors, will help remedy unjust and unreasonable wholesale rates caused by inaccurate transmission line ratings. We affirm the Commission's preliminary finding in the NOPR that this requirement will enhance operational and situational awareness by ensuring that transmission providers know the effect that changes in ambient air temperature would have on transmission line ratings within their system.[810] Further, as the Commission explained in the NOPR, this requirement will provide transmission providers and market monitor(s) the information necessary to verify the resulting transmission line ratings and to identify potential errors.[811]

332. We agree with EDFR that the transparency-increasing effects of requiring public utility transmission owners to share transmission line ratings and methodologies with their transmission provider(s), and with market monitors in RTOs/ISOs, will result in more accurate transmission line ratings. By sharing transmission line ratings and methodologies with transmission providers and market monitors, these parties will be better positioned to develop automated screens and other techniques to detect corrupted data or other errors that could negatively impact operations or planning processes.

333. We disagree with arguments that because transmission line ratings are reliability tools that are effectively overseen by NERC, additional transparency requirements are unnecessary. While transmission line ratings are an important reliability tool, we find (as discussed above in Section III) that transmission line ratings directly affect wholesale rates. Further, commenters have not explained why a relationship between transmission line ratings and reliability would represent a reason not to adopt the transparency requirements. We also disagree with comments that requiring public utility transmission owners to share transmission line ratings and methodologies with their transmission provider(s) and with market monitors in RTOs/ISOs would be unduly burdensome and could create inconsistencies between transmission line ratings used internally by transmission owners and transmission line ratings used by transmission providers. We recognize comments from New England State Agencies noting that such disclosure is already common in some markets, and that this indicates that transmission owners can comply without undue difficulty.[812] Moreover, we think it is unlikely that sharing of transmission line ratings would create inconsistencies in the manner described by ITC. On the contrary, we believe that a benefit of this requirement would be to identify and promote the resolution of such inconsistencies.

334. Finally, we reiterate that the Commission will continue to conduct reviews of transmission line ratings as a component of broader tariff compliance audits[813] and that this final rule does not change the auditing requirements or authorities of any entity.

b. Transmission Providers Sharing With Any Transmission Provider(s) Upon Request

335. As set forth under ''Obligations of Transmission Provider'' in *pro forma* OATT Attachment M, we further require transmission providers to share transmission line ratings and methodologies with any transmission provider(s) upon request and in a timely manner. We agree with commenters that contend that this requirement is necessary because transmission operators often consider the effect that power flows on their transmission lines will have on other transmission providers' transmission lines, and transmission providers will need transmission line ratings on other systems to evaluate these effects properly. While we acknowledge that Vistra's example involved neighboring transmission providers, we do not limit this requirement to neighboring transmission providers, as such power flow effects can sometimes extend beyond neighboring transmission providers (particularly if a neighboring transmission provider's system is geographically/electrically narrow where it approaches another transmission provider's system). Further, we agree with commenters that this information sharing could take several forms, and that the Commission need not dictate an information sharing method. However, any such information sharing method should be sufficient to accommodate the reasonable business needs of the other transmission provider(s) (*e.g.,* to allow the other transmission provider(s) to process transmission service requests in a timely manner).

c. Transmission Providers Sharing With Other Entities

336. We further require each transmission provider to maintain a database of their transmission owners' transmission line ratings and methodologies on the password-protected section of their OASIS site or other password-protected website. This requirement will allow other entities (beyond transmission providers and market monitors) that are able to access the password-protected section of the transmission provider's OASIS site or other password-protected website to have access to the database of transmission line ratings and methodologies. This requirement is set forth under ''Obligations of Transmission Provider'' in *pro forma* OATT Attachment M. We agree with commenters that making transmission line ratings and methodologies available to a broader range of stakeholders will amplify the expected benefits of the proposal included in the NOPR, further facilitate more accurate transmission line ratings, and facilitate more cost-effective decisions by market participants and, as described by New England State Agencies, state agencies. For example, without accurate

[810] NOPR, 173 FERC ¶ 61,165 at P 127.

[811] *Id.*

[812] New England State Agencies Comments at 20.

[813] Many commenters use the term ''audit'' to describe activities by market monitors and other entities that the Commission's rules do not define as auditing. We note that the Commission retains its authority to formally audit for compliance with OATTs and other Commission-jurisdictional rules.

transmission line rating information, market participants may be unable to make informed siting decisions regarding where to build generation or where to site load. Also, without accurate transmission line rating information, market participants may be unable to accurately predict and hedge against transmission congestion. Moreover, as New England State Agencies argue, access to transmission line ratings and transmission line rating methodologies is important to states that have relied on competitive procurements for certain types of energy development needs.[814] We acknowledge that requiring this information to be placed on OASIS or other password-protected website presents a burden on transmission providers, but we find that the benefits of increased transparency are likely to outweigh any such burden.

337. Beyond enhancing the general benefits of the transmission line rating requirements adopted herein, we find that transparency for transmission line ratings and methodologies will also be particularly beneficial to wholesale market participants trying to manage uncertainty. With respect to FTR market participants, for example, we agree with DC Energy that, because FTR payouts are based on congestion costs that change with transmission line ratings, sharing transmission line ratings and methodologies with a wider range of stakeholders will help establish efficient FTR market price discovery by improving FTR market participants' understanding of certain drivers of congestion, and allow such market participants to build such understanding into their FTR bids and offers.[815]

338. We disagree with arguments contending that requiring each transmission provider to maintain a database of each transmission owner's transmission line ratings and methodologies on the transmission provider's OASIS site or other password-protected website will lead to unjust and unreasonable wholesale rates or other undesirable outcomes. Specifically, we are not persuaded by comments that making transmission line ratings and methodologies available to a broader range of stakeholders could result in increased litigation whereby customers initiate complaints against transmission owners regarding the underlying assumptions used to calculate transmission line ratings or regarding the calculations themselves. There is a lack of evidence of increased litigation in those regions where disclosure is already common, as noted by the New England State Agencies.[816] Moreover, commenters have not identified any complaints or other such litigation about transmission line ratings related to this existing requirement. Further, consistent with the Commission's statement in the NOPR,[817] we intend to give latitude to transmission owners to determine their transmission line ratings in accordance with good utility practice. Finally, we note that section 37.6 of the Commission's regulations already requires transmission providers, upon customer request, to make all data used to calculate ATC for any constrained posted path publicly available on OASIS. This includes the limiting elements and the cause of the limit (*e.g.,* thermal, voltage, stability), as well as load forecast assumptions.[818] The posting requirement for transmission line ratings and methodologies is consistent with that existing requirement.

339. Transmission line ratings stored in the required database must include a full record of all transmission line ratings, both as used in real-time operations, and as used for all future market periods for which transmission service is offered. For example, a transmission provider that implements AARs calculated for the next 240 hours (for use in evaluating near-term transmission service requests), re-calculates such AARs every hour, and calculates seasonal line ratings (for use in evaluating longer-term transmission service requests) would keep records of its transmission line ratings in the following manner. With respect to its AARs, such a transmission provider would insert records into its transmission line rating database each hour, shortly after calculation of its AARs. In each such hour, the transmission provider would insert a separate AAR record into its database for: (1) Each transmission line; (2) each current and forward hour for which transmission line ratings are calculated (at least one rating for each of the 240 hours in the next 10 days); and (3) each rating type (normal and each type of emergency rating (*e.g.,* 30 minute, one hour, etc.)). If such a transmission provider had 1,000 transmission lines and four rating types (*e.g.,* normal, 30 minute, one hour, and four hour), then each hour the transmission provider would insert into its database 960,000 new AAR records ($1000 \times 240 \times 4$).[819] Furthermore, such a transmission provider would also maintain in its database records of which seasonal line ratings (for use in evaluating longer-term transmission service requests) or other types of transmission line ratings (as permitted under *pro forma* OATT Attachment M, *e.g.,* static line ratings) were in effect at which times for each transmission line.[820] Finally, while we are not requiring implementation of DLRs at this time, we note that if a transmission provider implements DLRs on any of its transmission lines, then under this requirement it would document the DLR ratings on such transmission lines in the same way that it documents its AAR ratings, as discussed above.

340. Transmission providers must maintain in their database records of which transmission line ratings and methodologies were in effect at which times over at least the previous five years. This five-year period of record retention is consistent with other document retention periods required for OASIS postings.[821] Each record in the database must indicate to which transmission line the record applies, and the date and time the record was entered into the database. Finally, the database must be maintained such that users can view, download, and query data in standard formats, using standard protocols.

d. Transmission Providers Posting Exceptions and Temporary Alternate Ratings to OASIS

341. Finally, in response to EPSA, we require transmission providers to make postings to the database of transmission line ratings on their OASIS site or other password-protected website (discussed above in Section IV.G.3.d) documenting

[814] New England State Agencies Comments at 20.

[815] DC Energy Comments at 3. While different RTOs/ISOs have different names for these financial products, such as financial transmission rights, transmission congestion rights, congestion revenue rights, etc., for simplicity here we will use FTRs to refer to any such financial product in the RTOs/ISOs.

[816] New England State Agencies Comments at 20.

[817] NOPR, 173 FERC ¶ 61,165 at PP 98, 105.

[818] *See* 18 CFR 37.6.

[819] We note that transmission providers may determine that there are more efficient ways of storing the AAR data than presented in the example above, and such approaches may be acceptable as long as users of the database can readily identify which such ratings (including for the operational hour and any forward hours) were in effect for which transmission lines at which times.

[820] We do not specify exactly how records of seasonal or static line ratings should be stored in the line rating database. However, such longer-term transmission line ratings do not necessarily need to be stored on an hourly basis, so long as users of the database can readily identify which such ratings were in effect for which transmission lines at which times. We note that some transmission lines may not have any AAR ratings at all, where permitted under *pro forma* OATT Attachment M, and so may only have ratings such as seasonal or static line ratings.

[821] 18 CFR 37.6 (Information to be posted on the OASIS).

any uses of exceptions (under the ''Exceptions'' paragraph of *pro forma* OATT Attachment M) or temporary alternate ratings (under the ''System Reliability'' section of *pro forma* OATT Attachment M). This requirement to post exceptions and temporary alternate ratings on OASIS or other password-protected website is set forth in *pro forma* OATT Attachment M. We require that such postings document the nature of and basis for each such exception or alternate rating, as well as the date(s) and time(s) of initiation and (if applicable) withdrawal for the exception or the alternate rating.

342. We find that the requirement for such postings will help ensure proper transparency for the use of such exceptions and temporary alternate ratings, similar to the transparency provided through other posting requirements of this final rule.[822] Furthermore, these postings of exceptions will support the fulfillment of and verification of compliance with the requirement, discussed above in Section IV.D.3, that exceptions be re-evaluated at least every five years.

343. Similar to the benefits discussed above in Section IV.G.3.c related to requiring transmission line ratings and methodologies to be available on OASIS sites or other password-protected websites, we find that this requirement for exceptions postings will enable and support verification of the accuracy of transmission line ratings.

H. Other Miscellaneous Issues

1. Comments

344. Some commenters argue for incentives to encourage DLR deployment. Specifically, NYTOs and ACORE request financial incentives for AARs and DLRs under FPA section 219.[823] ACPA/SEIA contend that the Commission should consider accelerated cost recovery of depreciation to implement sensor-based DLRs.[824] Although WATT urges the Commission to address the misalignment of incentives to adopt DLRs or other grid-enhancing technologies, WATT asserts that the Commission should not grant incentives for DLRs in this docket.[825]

345. MISO contends that while AARs may provide incremental transfer capability on existing transmission lines, they cannot solve significant long-range transmission problems.[826] Moreover, EEI argues that chronic congestion should be reviewed and alleviated in the transmission planning process.[827]

2. Commission Determination

346. In response to arguments about incentives for advanced transmission technology deployment, we find such arguments about incentivizing certain technology to be outside the scope of this proceeding, which is limited to the Commission's proposed requirements for transmission line ratings.

347. In response to MISO's assertion that AARs cannot solve significant long-range transmission problems, we find transmission planning and development to be outside the scope of this proceeding. For the same reason, we find EEI's claim that chronic congestion should be reviewed and alleviated in the transmission planning process to be outside the scope of this proceeding. We note that the Commission recently initiated a proceeding to examine a broad range of transmission-related issues, including regional transmission planning, in its July 2021 Advance Notice of Proposed Rulemaking in Docket No. RM21–17–000.[828]

I. Compliance

1. NOPR Proposal

348. In the NOPR, the Commission proposed to require each transmission provider to submit a compliance filing within 60 days of the effective date of any final rule. The Commission clarified that this compliance deadline would be for transmission providers to submit proposed AAR tariff changes, RTOs/ISOs to submit proposed tariff changes designed to maintain systems and procedures needed to allow for the use of AARs and DLRs, transmission owners to submit tariff changes implementing the proposed transparency reforms, or for each entity to otherwise comply with any final rule. As justification, the Commission acknowledged that implementing the reforms required by any final rule in this proceeding may be complex, but preliminarily found that implementation of these reforms is important to ensure wholesale rates are just and reasonable.

349. Recognizing the complexity of the proposed AAR requirements, the Commission proposed a staggered implementation approach that would prioritize implementation on historically congested transmission lines (within one year from the date of the compliance filing), but further proposed a less aggressive implementation of AARs on all other transmission lines (within two years from the date of the compliance filing). For the proposed DLR requirements and proposed transparency requirements, the Commission proposed that tariff changes filed in response to a final rule in this proceeding would become effective within one year from the date of the compliance filing.

350. The Commission recognized that some transmission providers may have provisions in their existing OATTs or other document(s) subject to the Commission's jurisdiction that the Commission has deemed to be consistent with or superior to the *pro forma* OATT or that are permissible under the independent entity variation standard or regional reliability standard. Where these provisions would be modified, the Commission proposed to require transmission providers to either comply with the proposed requirements or demonstrate that these previously approved variations continue to be consistent with or superior to the *pro forma* OATT as modified by the proposed requirements or demonstrate that these previously approved variations are just and reasonable and meet the purpose of the final rule under the independent entity variation standard or regional reliability standard.[829]

2. Comments

351. Comments on the proposed compliance and implementation timelines came predominately from RTOs/ISOs and transmission owners requesting more time. Most commenters suggest a minimum 120-day compliance deadline,[830] but some suggest a minimum 180-day compliance deadline,[831] and others suggest a minimum 90-day compliance deadline.[832] Most transmission owners commenting argue that three years is needed to implement AARs on priority transmission lines;[833] however,

[822] *See,* 18 CFR 37.6 (Information to be posted on the OASIS).

[823] NYTOs Comments at 2; ACORE Comments at 3–4.

[824] ACPA/SEIA Comments at 11.

[825] WATT Comments at 16.

[826] MISO Comments at 2, 6–7.

[827] EEI Comments at 6.

[828] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* 86 FR 40266 (July 27, 2021), 176 FERC ¶ 61,024 (2021).

[829] NOPR, 173 FERC ¶ 61,165 at P 132.

[830] EEI Comments at 19; NRECA/LPPC Comments at 28–29; MISO Transmission Owners Comments at 38–39; SCE Comments at 2; SDG&E Comments at 1–2; APS Comments at 10; WFEC Comments at 1; Southern Company Comments at 6–7; MISO Comments at 31; ISO–NE Comments at 12.

[831] CAISO Comments at 2; NYISO Comments at 18.

[832] SPP Comments at 16; PacifiCorp Comments at 7.

[833] EEI Comments at 18; NRECA/LPPC Comments at 28–29; MISO Transmission Owners Comments at 22–23; SCE Comments at 2; SDG&E Comments at

PacifiCorp suggests that two years would be sufficient, while PG&E suggests that at least four years would be needed.[834] NYTOs, WAPA, and BPA also contend that the proposed implementation timeline is insufficient but do not proposed an alternative schedule.[835] Some commenters support the proposed timeline.[836] Industrial Customer Organizations recommend that the proposed implementation timeline be halved.[837]

352. Arguing that one year is insufficient to implement AARs on historically congested transmission lines, MISO Transmission Owners explain that their experience is that, on average, it takes several years to implement AARs on even a subset of transmission lines.[838] According to MISO Transmission Owners, at least three years is needed for AAR implementation because of all the steps needed to implement AARs, including developing and updating the transmission line rating methodologies, analyzing historical weather information, identifying limiting elements, developing a transmission line ratings database, updating the transmission management system, testing the transmission line ratings, and linking the transmission owners' transmission management system to the RTO/ISO EMS, all while maintaining cybersecurity standards.[839] EEI similarly states that it could take up to two years just to upgrade operating and data systems to create the capability to produce and update AAR calculations.[840] Southern Company and SCE support EEI's comments.[841] Specifically, Southern Company requests at least 120 days for compliance filings and at least three years for AAR implementation.[842] SCE claims that the Commission's proposed implementation schedule is not realistic.[843]

353. PacifiCorp states that implementation of the NOPR proposal would be complicated as it would require updates to PacifiCorp's EMS, SCADA, and other software that communicates transmission line ratings with CAISO, RC West, and other transmission providers.[844] APS argues that adequate time is needed to develop the business requirements for the software vendors and that APS will have to work with multiple software vendors to comply with the TLR provisions as currently delineated in the NOPR.[845] NRECA states that its members need a minimum of three years to implement AARs on all their transmission lines in order to identify, document, and implement the necessary system and process changes.[846] Presenting a five year implementation approach, PG&E states that AAR implementation will require significant initial investments and that the Commission should allow for sufficient time for RTOs/ISOs and transmission owners to collaborate to develop new communication systems and new processes for determining and operating with AARs.[847]

354. ITC states that the proposed requirements in the NOPR would be complicated to implement for transmission owners that currently do not use AARs, and the implementation timeline would exceed one year since it would require coordination with the transmission management system, development of internal transmission line ratings software or a software purchase from a vendor, and analysis of how AARs will affect ITC's internal transmission line ratings database.[848] The proposed one-year implementation timelines suggest that ITC would need to first develop a costly and error-prone manual process as a short-term solution before developing a more permanent automated process.[849] ITC states that additional time should be built into the Commission's proposed timeline so that initial implementation issues can be identified and corrected.[850] Similarly, NYTOs argue that the one-year compliance timeline for AARs is overly ambitious and could have adverse effects, be costly, and potentially impossible.[851]

355. Other transmission owners voicing concern with the proposed schedule include WAPA, LADWP, and BPA. WAPA notes that it is concerned about the proposed timeline, given its expansive geographic area and transmission system of over 17,000 line miles, and its other statutory duties it must meet to operate its system reliably.[852] LADWP recommends an implementation period of no less than three years for congested transmission lines, noting that the proposed AAR requirements will necessitate extensive re-negotiations of long-term reservation rights and arguing that the AAR implementation timeline is not sufficient to address challenges associated with calculating hourly ATC based on AARs, including development of additional reliability tools and ongoing maintenance of these tools by additional skilled employees.[853] Similarly, BPA asserts that the proposed implementation period is too short because it fails to account for the different transmission provider service territory sizes and for the complexity of AAR implementation.[854]

356. However, according to OMS, the deadlines seem to be reasonable and necessary. OMS states that: MISO Transmission Owners are already working on implementing AARs; since 2016, MISO has had an Integrated Roadmap item called ''Application of Forecasted and Real-time Ambient Adjusted Ratings'' ranked as a high priority in MISO's 2021 Integrated Roadmap Work Plan; and, because MISO Transmission Owners have begun developing a framework to identify candidate AAR facilities based on historical congestion, they should have already begun phase one compliance.[855] Industrial Customer Organizations similarly state that transmission owners should begin AAR implementation now and that, without strict deadlines, AAR implementation before 2022 is unlikely.[856]

357. RTOs/ISOs generally request additional implementation time.[857] CAISO claims that the compliance schedule set forth in the NOPR is neither realistic nor achievable because the proposal for hourly updates to transmission line ratings will require additional market design changes and significant technology enhancements. For the implementation schedule, CAISO requests an additional 18 months from the submission of a compliance filing, explaining that implementation will require technology

1–2; APS Comments at 10; WFEC Comments at 1; Southern Company Comments at 6–7; ITC Comments at 5; LADWP Comments at 8–9.

[834] PacifiCorp Comments at 2–3; PG&E Comments at 6–8.

[835] NYTOs Comments at 1; WAPA Comments at 6; BPA Comments at 6.

[836] OMS Comments at 9; Potomac Economics Comments at 19–20.

[837] Industrial Customer Organizations Comments at 22.

[838] MISO Transmission Owners Comments at 22.

[839] *Id.*

[840] EEI Comments at 18.

[841] Southern Company Comments at 3–4; SCE Comments at 2.

[842] Southern Company Comments at 3–4.

[843] SCE Comments at 2.

[844] PacifiCorp Comments at 3–4.

[845] APS Comments at 6.

[846] NRECA/LPPC Comments at 28–29.

[847] PG&E Comments at 6–7.

[848] ITC Comments at 6.

[849] *Id.* at 6–7.

[850] *Id.* at 7.

[851] NYTOs Comments at 1.

[852] WAPA Comments at 6.

[853] LADWP Comments at 8–9.

[854] BPA Comments at 6.

[855] OMS Comments at 9.

[856] Industrial Customer Organizations Comments at 22.

[857] CAISO Comments at 2; ISO–NE Comments at 8; SPP Comments at 10; MISO Comments at 30–32; NYISO Comments at 16–18.

enhancements necessary to automate the submission and use of hourly adjusted transmission line ratings.[858] SPP contends that 60 days would be insufficient time for SPP to complete its stakeholder process to review any proposed tariff language and notes that, depending on the changes, the process would take at least three months. For implementation, SPP requests an additional two years from the submission of a compliance filing.[859] ISO–NE explains that it will need to upgrade its systems to accept hourly transmission line ratings, and that it does not believe one year would be enough time to do so, but does not propose a timeline.[860] Additionally, ISO–NE asks for sufficient time to analyze how AARs would impact the emergency ratings currently employed and flexibility in implementation timing, and states that an update to the overall rating methodology to include AARs may also necessitate the need for new emergency ratings based on those AARs.[861] MISO states that it would be able to implement the NOPR proposal in the real-time market in a year, but states that it would need until mid-2023 and the end of 2024 to implement the NOPR proposal in the day-ahead market and Intra-day and Foreword Reliability Assessment Commitment respectively.[862] NYISO requests flexibility for each RTO/ISO to develop its own implementation schedule,[863] arguing that the AAR schedule proposed is not enough time to develop the significant changes to software and rules needed,[864] and stating that it could incur significant risk and expense if it is required to comply within the proposed one to two years.[865] PJM, however, states that, while the NOPR proposal will likely require some additional system changes and data validation to comply, it believes the time proposed would be sufficient.[866]

358. Potomac Economics states that clarification may be needed as to whether the requirements for automation are on the transmission line rating submission process and use of AARs or the entire transmission line rating process. Potomac Economics states that requiring full automation may delay implementation and may not be appropriate for all transmission owners.[867]

359. Finally, PJM requests clarity that public utilities are able to demonstrate compliance via the independent entity variation standard, regional reliability standard, or demonstrate that their existing rules are consistent with or superior to the reforms adopted by the Commission.[868]

3. Commission Determination

360. Upon consideration of the comments received, we modify the compliance deadline proposed in the NOPR. Instead of 60 days, we require each transmission provider to submit a compliance filing within 120 days of the effective date of this final rule. We clarify that this compliance deadline is for transmission providers to revise their OATTs to incorporate *pro forma* OATT Attachment M. We agree with EEI's compliance recommendation [869] and find that 120 days will be sufficient to allow for a robust stakeholder evaluation and development of revised tariff language to comply with the requirements adopted in this final rule.

361. In addition, we modify the proposed implementation schedule. Instead of the proposed one-year/two-year staggered implementation timeline based on priority, we require that all requirements adopted herein be implemented no later than three years from the compliance filing due date. Three years is consistent with the implementation schedule most commonly suggested by transmission owners for AAR implementation on priority transmission lines.[870] We find that three years should be sufficient time for transmission owners and transmission providers to implement changes to their processes and systems to comply with the requirements adopted in this final rule.

362. In response to comments about automation from Potomac Economics, we clarify that while we are not adopting a specific automation requirement, we nonetheless believe it is likely that all or much of AAR calculation processes will be automated. However, nothing in this final rule prevents an individual transmission provider from implementing certain portions of the *pro forma* OATT Attachment M requirements manually, should it prefer manual implementation and can satisfy the requirements of this final rule.

363. Finally, some public utility transmission providers may have provisions in their existing *pro forma* OATTs or other document(s) subject to the Commission's jurisdiction that the Commission has deemed to be consistent with or superior to the *pro forma* OATT. Where these provisions would be modified by this final rule, transmission providers must either comply with the requirements adopted in this final rule or demonstrate that these previously approved variations continue to be consistent with or superior to the *pro forma* OATT, as modified by this final rule.[871]

V. Information Collection Statement

364. The information collection (IC) requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[872] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[873] Respondents subject to the filing requirements of this final rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

365. This final rule, pursuant to section 206 of the FPA, reforms the *pro forma* OATT and the Commission's regulations to improve the accuracy and transparency of electric transmission line ratings used by transmission providers. These provisions affect the following collections of information: FERC–516H, Pro Forma Open Access Transmission Tariff (Control No. 1902–0297); and FERC–725A, Mandatory Reliability Standards for the Bulk-Power System (Control No. 1902–0244).

366. In the NOPR, the Commission solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

367. Summary of the Collection of Information in the Final Rule:

FERC 516H: This final rule amends 18 CFR 35.28(c)(5) to require any public

[858] CAISO Comments at 2.

[859] SPP Comments at 10.

[860] ISO–NE Comments at 8.

[861] *Id.* at 11.

[862] MISO Comments at 30–32.

[863] NYISO Comments at 16.

[864] *Id.* at 18.

[865] *Id.* at 19.

[866] PJM Comments at 8.

[867] Potomac Economics Comments at 19.

[868] PJM Comments at 15.

[869] EEI Comments at 19.

[870] *Id.* at 18; NRECA/LPPC Comments at 28–29; MISO Transmission Owners Comments at 22–23; SCE Comments at 2; SDG&E Comments at 1–2; APS Comments at 10; WFEC Comments at 1; Southern Company Comments at 6–7; ITC Comments at 5; LADWP Comments at 8–9.

[871] *See* 18 CFR 35.28(c)(1)(vi).

[872] 44 U.S.C. 3507(d).

[873] 5 CFR 1320.11 (2021).

utility that owns transmission facilities that are not under the public utility's control to, consistent with the *pro forma* OATT required by 18 CFR 35.28(c)(1), share with the public utility that controls such facilities (and its Market Monitoring Unit(s), if applicable):

(i) Transmission line ratings for each period for which transmission line ratings are calculated for such facilities (with updated ratings shared each time ratings are calculated); and

(ii) Written transmission line rating methodologies used to calculate the transmission line ratings for such facilities provided under subparagraph (i), above.

Section 35.28(g)(13) of this final rule requires each RTO and ISO to establish and maintain systems and procedures necessary to allow any public utility whose transmission facilities are under the independent control of the ISO or RTO to electronically update transmission line ratings for such facilities (for each period for which transmission line ratings are calculated) at least hourly, with such data submitted by those public utility transmission owners directly into the ISO's or RTO's Energy Management System through Supervisory Control and Data Acquisition or related systems.

FERC–725A: Reliability Standard FAC–008–5 is not being revised in this proceeding. However, as shown in the burden table below, the requirements of this final rule under section 206 of the FPA affect the burden for Requirements 2, 3, and 6 in Reliability Standard FAC–008–5.

368. *Title:* Pro Forma Open Access Transmission Tariff (FERC–516H) and Mandatory Reliability Standards for the Bulk-Power System (FERC–725A).

369. *Action:* Revision of collections of information in accordance with Docket No. RM20–16–000.

370. *OMB Control Nos.:* 1902–0297 (FERC–516H) and 1902–0244 (FERC–725A).

371. *Respondents:* Transmission owners, transmission service providers, generator owners, and RTOs/ISOs.

372. *Frequency of Information Collection:* One time and annually.

373. *Necessity of Information:* The reforms to the *pro forma* OATT and the Commission's regulations will improve the accuracy and transparency of electric transmission line ratings used by transmission providers.

374. *Internal Review:* The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

375. Our estimates are based on the NERC Compliance Registry as of September 3, 2020, which indicates that 78 transmission service providers,[874] 797 generator owners,[875] and 289 transmission owners are registered within the United States and are subject to this rulemaking.[876] There are also six RTOs/ISOs in the United States subject to this rulemaking.

376. *Public Reporting Burden:* The burden and cost estimates below are based on the need for applicable entities to revise documentation, already required by the *pro forma* OATT and the Commission's regulations as well as Reliability Standard FAC–008–5, Facility Ratings.[877]

377. The Commission estimates that the final rule will affect the burden[878] and cost of FERC–516H and FERC–725A as follows:

CHANGES IN FINAL RULE IN DOCKET NO. RM20–16–000

A. Area of modification	B. Number of respondents	C. Annual estimated number of responses per respondent	D. Annual estimated number of responses (column B × column C)	E. Average burden hours & cost[879] per response	F. Total estimated burden hours & total estimated cost (column D × column E)
FERC–516H, Pro Forma Open Access Transmission Tariff (Control No. 1902–0297)					
For point-to-point transmission service requests within ten days, use AARs in determining ATC and TTC. (One-Time Burden in Year 1).	129 (TOs[880] not in RTOs/ISOs[881]).	1	129	1,440 hrs; $120,485	185,760 hrs; $15,542,539.
Where network transmission service is provided, use hourly AARs to determine curtailment or redispatch of network transmission service. (One-Time Burden in Year 1).	160 (to account for those TOs in RTOs/ISOs that are not included in the line above).	1	160	1,440 hrs; $120,485	230,400 hrs; $19,277,568.
Transmission Providers to implement uniquely determined emergency ratings (One-Time Burden in Year 1).	160 (to account for those TOs in RTOs/ISOs that are not included in the line above).	1	160	360 hrs; $30,121	57,600 hrs; $4,819,392.
Implement software and systems to communicate the required transmission line ratings with relevant parties. (One-Time Burden in Year 1).	78 (TSPs[882])	1	78	352 hrs; $29,452	27,456 hrs; $2,297,243.

[874] The transmission service provider (TSP) function is a NERC registration function which is similar to the transmission provider that is referenced in the *pro forma* OATT. The TSP function is being used as a proxy to estimate the number of transmission providers that are impacted by this rulemaking.

[875] Of the 797 generator owners listed in the September 3, 2020 NERC Compliance Registry, the Commission estimates that only 10% of all NERC registered generator owners own facilities between the step-up transformer and the point of interconnection. For this reason, the Commission estimates that only 80 generator owners are affected.

[876] The number of entities listed from the NERC Compliance Registry reflects the omission of the Texas RE registered entities.

[877] The burden associated with Reliability Standard FAC–008–5, approved by the Commission under section 215 of the FPA, is included in the OMB-approved inventory for FERC–725A. Reliability Standard FAC–008–5 is not being revised in this proceeding; however, the requirements of this final rule under section 206 of the FPA affect the burden for three requirements in Reliability Standard FAC–008–5.

[878] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

CHANGES IN FINAL RULE IN DOCKET NO. RM20–16–000—Continued

A. Area of modification	B. Number of respondents	C. Annual estimated number of responses per respondent	D. Annual estimated number of responses (column B × column C)	E. Average burden hours & cost[879] per response	F. Total estimated burden hours & total estimated cost (column D × column E)
RTOs/ISOs implement software with the ability to accommodate AARs in both the day-ahead and real-time markets on an hourly basis. (One-Time Burden in Year 1).	6 (RTOs/ISOs)	1	6	9,000 hrs; $753,030	54,000 hrs; $4,518,180.
RTOs/ISOs establish the systems and procedures necessary to allow transmission owners to update line ratings on an hourly basis directly into an EMS. (One-Time Burden in Year 1).	6 (RTOs/ISOs)	1	6	1,056 hrs; $88,356	6,336 hrs; $530,133.
Transmission owners update forecasts and ratings, and share transmission line ratings and facility ratings methodologies w/transmission providers and, if applicable, RTOs/ISOs & market monitors (Year 1 and Ongoing).	289 (TOs)	1	289	176 hrs; $14,726	50,864 hrs; $4,255,791.
Compliance Filings (One-Time Burden in Year 1).	295 (TOs and (RTOs/ISOs).	1	295	160 hrs; $13,387	47,200 hrs; $3,949,224.
Net Subtotal for FERC–516H (Year 1).			373	13,984 hrs; $1,170,041	429,216 hrs; $50,671,891.
Net Subtotal for FERC–516H (Ongoing).			289	176 hrs; $14,726	50,864 hrs; $4,255,791.
FERC–725A, Mandatory Reliability Standards for the Bulk-Power System—Reliability Standard FAC–008–5					
Review and update facility ratings methodology, Requirements R2 and R3. (One-Time Burden in Year 1).	369 (TOs & GOs)[883]	1	369	40 hrs; $3,347	14,760 hrs; $1,234,969.
Determine facility ratings consistent with methodology, Requirement R6. (Burden in Year 1 and Ongoing).	369 (TOs & GOs)	1	369	8 hrs; $669	2,952 hrs; $246,994.
Net Subtotal for FERC–725A (Year 1).			369	48 hrs; $4,016	17,712 hrs; $1,481,963.
Net Subtotal for FERC–725A (Ongoing).			369	8 hrs; $669	2,952 hrs; $246,994.

378. The Commission noted in the NOPR that, for purposes of estimating burden in the NOPR, the Commission conservatively estimated these values based on the maximum number of entities and burden. The Commission noted that some entities may, for example, already use AARs in their existing operations, in which case the actual burden associated with specific reforms associated with the use of AARs would be lower than the estimate. The Commission added that, on the other hand, changing approaches to facility ratings may require extra testing and training for some entities to ensure reliable operations and gain familiarity with the approach. In the NOPR, the Commission explained that it estimated that the majority of the additional burden associated with the NOPR would occur in the first year, and that, once established, the ongoing burden would closely approach the existing burden of operating the transmission system. The Commission sought comment on the estimates in the table provided in the NOPR and the assumptions described in the NOPR.

379. We have revised the table above to reflect the additional burden associated with the additional requirements issued in this final rule related to emergency ratings and daytime and nighttime ratings.

380. We have also revised the table based on comments provided by MISO. MISO states that it estimates costs of approximately $200,000 to implement AARs for current hour transmission service, and costs to implement forecasted AARs in the forward markets and for transmission service, such as in

[879] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics (BLS) for three positions involved in the reporting and recordkeeping requirements. These figures include salary (based on BLS data for May 2019, *http://bls.gov/oes/current/naics2_22.htm*) and benefits (based on BLS data for December 2019; issued March 19, 2020, *http://www.bls.gov/news.release/ecec.nr0.htm*) and are Manager (Code 11–0000 $97.15/hour), Electrical Engineer (Code 17–2071 $70.19/hour), and File Clerk (Code 43–4071 $34.79/hour). The hourly cost for the reporting requirements ($83.67) is an average of the cost of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

[880] Transmission Owners. While the AAR reforms in the final rule apply to transmission providers, the Commission computes an implementation burden based on the number of transmission owners because transmission owners typically calculate transmission line ratings and are therefore likely to be the entities that update computations to determine the effect of changing ambient air temperatures on transmission line ratings.

[881] Regional Transmission Organizations/Independent System Operators.

[882] Transmission Service Providers.

[883] This number reflects 289 transmission owners and 10% of the 797 generator owners (GOs) estimated to own facilities between the step-up transformer and the point of interconnection.

the day-ahead market, between $500,000 and $750,000.[884] The Commission has conservatively applied this estimate to all of the RTOs/ISOs. The Commission notes, however, that this is a conservative maximum estimate and that some RTOs/ISOs might have pre-existing plans to upgrade software in the coming years, which may implement many of the same functionalities necessitated by this final rule that are captured in these RTO/ISO cost estimates.

381. In this final rule, besides the noted revisions, the Commission used the numbers provided in the NOPR.

382. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 via email (*DataClearance@ferc.gov*) or telephone ((202) 502–8663).

VI. Environmental Analysis

383. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[885] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this final rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classification, and services.[886]

VII. Regulatory Flexibility Act

384. The Regulatory Flexibility Act of 1980[887] generally requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) sets the threshold for what constitutes a small business. The small business size standards are provided in 13 CFR 121.201 (2021). Under SBA's size standards,[888] RTOs/ISOs, planning regions, and transmission owners all fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121), with a size threshold of 500 employees (including the entity and its associates).[889]

385. The six RTOs/ISOs (SPP, MISO, PJM, ISO–NE, NYISO, and CAISO) each employ more than 500 employees and are not considered small.

386. We estimate that 337 transmission owners and six planning authorities are also affected by this final rule. Using the list of transmission owners from the NERC Registry (dated September 3, 2020), we estimate that approximately 68% of those entities are small entities.

387. We estimate that 80 generator owners own facilities between the step-up transformer and the point of interconnection. We estimate again that 68% of these are small entities.

388. We estimate that 78 transmission service providers are affected by this final rule. We estimate again that 68% of these are small entities.

389. We estimate additional one-time costs associated with this final rule (as shown in the table above) of:

390. $854,773 for each RTO/ISO (FERC–516H).

391. $178,719 for each transmission owner (FERC–516H).

392. $3,347 for each transmission owner (FERC–725A).

393. $13,387 for each affected generator owner (FERC–516H).

394. $3,347 for each generator owner (FERC–725A).

395. $29,452 for each transmission service provider (FERC–516H).

396. Therefore, the estimated additional one-time cost per entity ranges from $16,734 to $854,773.

397. We estimate that the majority of the additional burden associated with this final rule occurs in the first year (as shown in the table above), and that, once established, the ongoing burden will closely approach the existing burden of operating the transmission system.

398. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.''[890] We do not consider the estimated cost to be a significant economic impact. As a result, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Document Availability

399. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

400. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

401. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

402. This final rule is effective 60 days from the later of the date Congress receives the agency notice or the date the rule is published in the **Federal Register**. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

[884] MISO Comments at 32.

[885] *Reguls. Implementing the Nat'l Envt'l Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[886] 18 CFR 380.4(a)(15) (2021).

[887] 5 U.S.C. 601–612.

[888] 13 CFR 121.201.

[889] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Administrations' regulations at 13 CFR 121.201 define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 500 employees. *See* 5 U.S.C. 601(3) (citing to Section 3 of the Small Business Act, 15 U.S.C. 632).

[890] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,* at 18 (May 2012), *https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.*

By the Commission. Commissioner Danly is concurring with a separate statement attached.

Commissioner Phillips is not participating.

Issued: December 16, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 35, chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.28 by adding paragraphs (b)(12) through (16), (c)(5), and (g)(13) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(b) * * *

(12) *Ambient-adjusted rating* means a transmission line rating that applies to a time period of not greater than one hour; reflects an up-to-date forecast of ambient air temperature across the time period to which the rating applies; reflects the absence of solar heating during nighttime periods where the local sunrise/sunset times used to determine daytime and nighttime periods are updated at least monthly, if not more frequently; and is calculated at least each hour, if not more frequently.

(13) *Emergency rating* means a transmission line rating that reflects operation for a specified, finite period, rather than reflecting continuous operation. An emergency rating may assume an acceptable loss of equipment life or other physical or safety limitations for the equipment involved.

(14) *Dynamic line rating* means a transmission line rating that applies to a time period of not greater than one hour and reflects up-to-date forecasts of inputs such as (but not limited to) ambient air temperature, wind, solar heating intensity, transmission line tension, or transmission line sag.

(15) *Energy Management System* (EMS) means a computer control system used by electric utility dispatchers to monitor the real-time performance of the various elements of an electric system and to dispatch, schedule, and/or control generation and transmission facilities.

(16) *Supervisory Control and Data Acquisition* (SCADA) means a computer system that allows an electric system operator to remotely monitor and control elements of an electric system.

(c) * * *

(5) Any public utility that owns transmission facilities that are not under the public utility's control must, consistent with the pro forma tariff required by paragraph (c)(1) of this section, share with the public utility that controls such facilities (and its Market Monitoring Unit(s), if applicable):

(i) Transmission line ratings for each period for which transmission line ratings are calculated for such facilities (with updated ratings shared each time ratings are calculated); and

(ii) Written transmission line rating methodologies used to calculate the transmission line ratings for such facilities provided under subparagraph (i).

* * * * *

(g) * * *

(13) *Transmission line ratings.* (i) Each Commission-approved independent system operator or regional transmission organization must establish and maintain systems and procedures necessary to allow any public utility whose transmission facilities are under the independent control of the independent system operator or regional transmission organization to electronically update transmission line ratings for such facilities (for each period for which transmission line ratings are calculated) at least hourly, with such data submitted by those public utility transmission owners directly into the independent system operator's or regional transmission organization's EMS through SCADA or related systems.

(ii) [Reserved]

Note: The following appendix will not be published in the Code of Federal Regulations.

Appendix A: Abbreviated Names of Commenters

The following table contains the abbreviated names of the commenters that are used in this final rule.

Short name/acronym	Commenter
AEP	American Electric Power Company, Inc.
ACORE	The American Council on Renewable Energy.
ACPA/SEIA	American Clean Power Association (ACPA) and the Solar Energy Industries Association (SEIA).
APS	Arizona Public Service Company.
BPA	Bonneville Power Administration.
CAISO	California Independent System Operator Corporation.
CAISO DMM	California Independent System Operator Corporation Department of Market Monitoring.
CEA	Canadian Electricity Association.
Certain TDU	Certain Transmission Dependent Utilities consist of Alliant Energy Corporate Services, Inc. (Alliant Energy); Consumers Energy Company (Consumers Energy); and DTE Electric Company (DTE Electric).
Clean Energy Parties	Clean Energy Parties consist of the Natural Resources Defense Council, Sustainable FERC Project, Conservation Law Foundation, Sierra Club, Western Resource Advocates, Western Grid Group, Clean Grid Alliance, NW Energy Coalition, and Southern Environmental Law Center.
DC Energy	DC Energy, LLC.
Dominion	Dominion Energy Services, Inc.
Duke Energy	Duke Energy Corporation.
EDFR	EDF Renewables, Inc.
EEI	Edison Electric Institute.
ENEL	ENEL North America.
Entergy	Entergy Services, LLC.
EPRI	Electric Power Research Institute.
EPSA	Electric Power Supply Association.
Eversource	Eversource Energy Service Company.
Exelon	Exelon Corporation.
IID	Imperial Irrigation District.

Short name/acronym	Commenter
Indicated PJM Transmission Owners	Indicated PJM Transmission Owners consist of: American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc. (collectively ''AEP''); Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Exelon Corporation; FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, MidAtlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; and Rockland Electric Company.
Industrial Customer Organizations	Industrial Customer Organizations consists of: American Forest & Paper Association (AF&PA), Coalition of MISO Transmission Customers (CMTC), Electricity Consumers Resource Council (ELCON), Industrial Energy Consumers of America (IECA), and the PJM Industrial Customer Coalition (PJMICC).
ISO–NE	ISO New England Inc.
ITC	International Transmission Company d/b/a ITC Transmission, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.
LADWP	Los Angeles Department of Water and Power.
LineVision	LineVision, Inc.
MISO	Midcontinent Independent System Operator, Inc.
MISO Transmission Owners	MISO Transmission Owners consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.
NERC	North American Electric Reliability Corporation.
New England State Agencies	New England State Agencies consist of: Connecticut Attorney General William Tong; Massachusetts Attorney General Maura Healey; the Connecticut Department of Energy and Environmental Protection; the Connecticut Office of Consumer Counsel; the Maine Office of the Public Advocate; the New Hampshire Consumer Advocate; Peter F. Neronha, Rhode Island Attorney General; and Thomas J. Donovan, Jr., Attorney General of Vermont.
NRECA/LPPC	National Rural Electric Cooperative Association (NRECA) and the Large Public Power Council (LPPC).
NYISO	New York Independent System Operator, Inc.
NYTOs	The New York Transmission Owners consist of: Central Hudson Gas & Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (Consolidated Edison); Niagara Mohawk Power Corporation d/b/a National Grid (National Grid); New York Power Authority (NYPA); New York State Electric & Gas Corporation (NYSEG); Orange and Rockland Utilities, Inc. (O&R); Long Island Power Authority (LIPA); and Rochester Gas and Electric Corporation (RG&E).
Ohio FEA	Public Utilities Commission of Ohio's Office of the Ohio Federal Energy Advocate.
OMS	Organization of MISO States.
PacifiCorp	PacifiCorp.
PG&E	Pacific Gas and Electric Company.
PJM	PJM Interconnection, L.L.C.
Potomac Economics	Potomac Economics, LTD.
Prysmian	The Prysmian Group.
R Street Institute	R Street Institute.
SCE	Southern California Edison Company.
SDG&E	San Diego Gas & Electric Company.
Southern Company	Solar Energy Industries Association.
SPP	Southern Company Services, Inc.
SPP MMU	Southwest Power Pool, Inc.
Sunflower	Sunflower Electric Power Corporation.
Tangibl	Tangibl Group, Inc.
TAPS	Transmission Access Policy Study Group.
UDPU	Utah Division of Public Utilities.
Vistra	Vistra Corp.
WAPA	Western Area Power Administration.
WATT	Working for Advanced Transmission Technologies.
WFEC	Western Farmers Electric Cooperative.

Appendix B: Pro Forma Open Access Transmission Tariff

ATTACHMENT M

Transmission Line Ratings

General

The Transmission Provider will implement Transmission Line Ratings on the transmission lines over which it provides Transmission Service, as provided below.

Definitions

The following definitions apply for purposes of this Attachment:

(1) ''Transmission Line Rating'' means the maximum transfer capability of a transmission line, computed in accordance with a written Transmission Line Rating methodology and consistent with Good Utility Practice, considering the technical limitations on conductors and relevant transmission equipment (such as thermal flow limits), as well as technical limitations of the Transmission System (such as system voltage and stability limits). Relevant transmission equipment may include, but is not limited to, circuit breakers, line traps, and transformers.

(2) ''Ambient-Adjusted Rating'' (AAR) means a Transmission Line Rating that:

(a) Applies to a time period of not greater than one hour.

(b) Reflects an up-to-date forecast of ambient air temperature across the time period to which the rating applies.

(c) Reflects the absence of solar heating during nighttime periods, where the local sunrise/sunset times used to determine daytime and nighttime periods are updated at least monthly, if not more frequently.

(d) Is calculated at least each hour, if not more frequently.

(3) ''Seasonal Line Rating'' means a Transmission Line Rating that:

(a) Applies to a specified season, where seasons are defined by the Transmission Provider to include not fewer than four seasons in each year, and to reasonably reflect portions of the year where expected high temperatures are relatively consistent.

(b) Reflects an up-to-date forecast of ambient air temperature across the relevant season over which the rating applies.

(c) Is calculated annually, if not more frequently, for each season in the future for which Transmission Service can be requested.

(4) ''Near-Term Transmission Service'' means Transmission Service which ends not more than 10 days after the Transmission Service request date. When the description of obligations below refers to either a request for information about the availability of potential Transmission Service (including, but not limited to, a request for ATC), or to the posting of ATC or other information related to potential service, the date that the information is requested or posted will serve as the Transmission Service request date. ''Near-Term Transmission Service'' includes any Point-To-Point Transmission Service, Network Resource designations, or secondary service where the start and end date of the designation or request is within the next 10 days.

(5) ''Emergency Rating'' means a Transmission Line Rating that reflects operation for a specified, finite period, rather than reflecting continuous operation. An Emergency Rating may assume an acceptable loss of equipment life or other physical or safety limitations for the equipment involved.

System Reliability

If the Transmission Provider reasonably determines, consistent with Good Utility Practice, that the temporary use of a Transmission Line Rating different than would otherwise be required by this Attachment is necessary to ensure the safety and reliability of the Transmission System, then the Transmission Provider may use such an alternate rating. The Transmission Provider must document in its database of Transmission Line Ratings and Transmission Line Rating methodologies on OASIS or another password-protected website, as required by this Attachment, the use of an alternate Transmission Line Rating under this paragraph, including the nature of and basis for the alternate rating, the date and time that the alternate rating was initiated, and (if applicable) the date and time that the alternate rating was withdrawn and the standard rating became effective again.

Obligations of Transmission Provider

The Transmission Provider will have the following obligations.

The Transmission Provider must use AARs as the relevant Transmission Line Ratings when performing any of the following functions: (1) Evaluating requests for Near-Term Transmission Service; (2) responding to requests for information on the availability of potential Near-Term Transmission Service (including requests for ATC or other information related to potential service); or (3) posting ATC or other information related to Near-Term Transmission Service to the Transmission Provider's OASIS site or another password-protected website.

The Transmission Provider must use AARs as the relevant Transmission Line Ratings when determining whether to curtail (under section 13.6) Firm Point-To-Point Transmission Service or when determining whether to curtail and/or interrupt (under section 14.7) Non-Firm Point-To-Point Transmission Service if such curtailment and/or interruption is both necessary because of issues related to flow limits on transmission lines and anticipated to occur (start and end) within 10 days of such determination. For determining whether to curtail or interrupt Point-To-Point Transmission Service in other situations, the Transmission Provider must use Seasonal Line Ratings as the relevant Transmission Line Ratings.

The Transmission Provider must use AARs as the relevant Transmission Line Ratings when determining whether to curtail (under section 33) or redispatch (under sections 30.5 and/or 33) Network Integration Transmission Service or secondary service if such curtailment or redispatch is both necessary because of issues related to flow limits on transmission lines and anticipated to occur (start and end) within 10 days of such determination. For determining the necessity of curtailment or redispatch of Network Integration Transmission Service or secondary service in other situations, the Transmission Provider must use Seasonal Line Ratings as the relevant Transmission Line Ratings.

The Transmission Provider must use Seasonal Line Ratings as the relevant Transmission Line Ratings when evaluating requests for and whether to curtail, interrupt, or redispatch any Transmission Service not otherwise covered above in this section (including, but not limited to, requests for non-Near-Term Transmission Service or requests to designate or change the designation of Network Resources or Network Load), when developing any ATC or other information posted or provided to potential customers related to such services. The Transmission Provider must use Seasonal Line Ratings as a recourse rating in the event that an AAR otherwise required to be used under this Attachment is unavailable.

The Transmission Provider must use uniquely determined Emergency Ratings for contingency analysis in the operations horizon and in post-contingency simulations of constraints. Such uniquely determined Emergency Ratings must also include separate AAR calculations for each Emergency Rating duration used.

In developing forecasts of ambient air temperature for AARs and Seasonal Line Ratings, the Transmission Provider must develop such forecasts consistent with Good Utility Practice and on a non-discriminatory basis.

Postings to OASIS or another password-protected website: The Transmission Provider must maintain on the password-protected section of its OASIS page or on another password-protected website a database of Transmission Line Ratings and Transmission Line Rating methodologies. The database must include a full record of all Transmission Line Ratings, both as used in real-time operations, and as used for all future periods for which Transmission Service is offered. Any postings of temporary alternate Transmission Line Ratings or exceptions used under the System Reliability section above or the Exceptions section below, respectively, are considered part of the database. The database must include records of which Transmission Line Ratings and Transmission Line Rating methodologies were in effect at which times over at least the previous five years, including records of which temporary alternate Transmission Line Ratings or exceptions were in effect at which times during the previous five years. Each record in the database must indicate which transmission line the record applies to, and the date and time the record was entered into the database. The database must be maintained such that users can view, download, and query data in standard formats, using standard protocols.

Sharing with Transmission Providers: The Transmission Provider must share, upon request by any Transmission Provider and in a timely manner, the following information:

(1) Transmission Line Ratings for each period for which Transmission Line Ratings

are calculated, with updated ratings shared each time Transmission Line Ratings are calculated, and

(2) Written Transmission Line Rating methodologies used to calculate the Transmission Line Ratings in (1) above.

Exceptions: Where the Transmission Provider determines, consistent with Good Utility Practice, that the Transmission Line Rating of a transmission line is not affected by ambient air temperature or solar heating, the Transmission Provider may use a Transmission Line Rating for that transmission line that is not an AAR or Seasonal Line Rating. Examples of such a transmission line may include (but are not limited to): (1) A transmission line for which the technical transfer capability of the limiting conductors and/or limiting transmission equipment is not dependent on ambient air temperature or solar heating; or (2) a transmission line whose transfer capability is limited by a Transmission System limit (such as a system voltage or stability limit) which is not dependent on ambient air temperature or solar heating. The Transmission Provider must document in its database of Transmission Line Ratings and Transmission Line Rating methodologies on OASIS or another password-protected website any exceptions to the requirements contained in this Attachment initiated under this paragraph, including the nature of and basis for each exception, the date(s) and time(s) that the exception was initiated, and (if applicable) the date(s) and time(s) that each exception was withdrawn and the standard rating became effective again. If the technical basis for an exception under this paragraph changes, then the Transmission Provider must update the relevant Transmission Line Rating(s) in a timely manner. The Transmission Provider must reevaluate any exceptions taken under this paragraph at least every five years.

FEDERAL ENERGY REGULATORY COMMISSION

Managing Transmission Line Ratings
Docket No. RM20–16–000

(Issued December 16, 2021)

DANLY, Commissioner, *concurring:*

1. I concur with the issuance of this final rule because I agree that the record in this proceeding supports a finding that current transmission rates are unjust and unreasonable because line rating information is often inaccurate.[1] The rates customers pay to support transmission are distorted because the ratings that purport to represent the true operating characteristics of the transmission system are distorted. The voluminous record evidence in this proceeding is sufficient to support a Federal Power Act section 206 action to remedy unjust and unreasonable rates.[2] The record also is sufficient to support the replacement rates we order in this rule.

2. Of course, we cannot act pursuant to section 206 without substantial record evidence that the existing rate is unjust and unreasonable and further record support for a replacement rate. We cannot impose a requirement for dynamic line ratings, for example, because we do not have the record support to do so at this time.[3] Action cannot be taken under section 206 merely because a potential reform is a good idea or because a contemplated policy might yield greater efficiencies.

3. Here, I am persuaded that we have sufficient record evidence to require ambient-adjusted ratings (AAR) on all transmission lines because the record shows the existing paradigm significantly distorts efficient use of the transmission system.[4] In addition, AAR is a just and reasonable replacement rate because the record evidence shows the additional costs are incremental and will provide significant benefits.

4. In this case, the requirements of both steps of section 206 have been satisfied. As a Commission, we must ensure that every action taken under section 206 fully meets these burdens and I will apply the same rigorous analysis to every future section 206 proposal to improve the transmission system.

For these reasons, I respectfully concur.

James P. Danly,

Commissioner.

[FR Doc. 2021–27735 Filed 1–12–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *Managing Transmission Line Ratings,* 177 FERC ¶ 61,179 at P 29 (2021).

[2] 16 U.S.C. 824e.

[3] *See Managing Transmission Line Ratings,* 177 FERC ¶ 61,179 at P 36 (declining to require dynamic line ratings).

[4] *Id.* at P 83.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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