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Presidential Documents

Title 3—

The President

Proclamation 10347 of March 4, 2022

National Consumer Protection Week, 2022

By the President of the United States of America

A Proclamation

As our Nation recovers and our economy continues its historic growth following a global pandemic, it is important that consumers are fully informed about their rights and the potential risks in the marketplace. Hard-working American families deserve to feel secure in the knowledge that, as we build back better, we are building an economy based on principles of fairness, privacy, and equity. During National Consumer Protection Week, we recommit ourselves to those basic rights, to protecting consumers, to raising awareness about bad actors and deceptive practices in the marketplace, and to empowering people to make informed financial decisions so that our economy works for everyone.

My Administration has zero tolerance for criminals who steal Americans' hard-earned dollars or abuse their personal information. Particularly in moments of crisis, like this pandemic, unscrupulous individuals have tried to take advantage of struggling Americans by price gouging, stealing money, harvesting personal information, and offering false hope for economic assistance, jobs, treatments, and cures. We are committed to halting these practices and protecting all consumers, including small businesses and gig workers, from fraud and unlawful business practices. Our Nation's consumer protection agencies—including the Federal Trade Commission (FTC), Consumer Financial Protection Bureau, and Consumer Product Safety Commission—work with the Department of Justice and law enforcement agencies nationwide to fight fraud, predatory practices, and data exploitation by abusers large and small. These agencies work every day to protect consumers and ensure product safety through investigations, law enforcement actions, and free, actionable, plain-language consumer education resources.

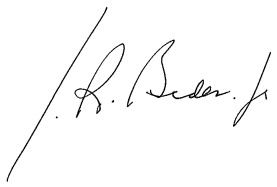
Abusive practices have an especially harmful impact on communities of color, who are often targeted by bad actors. A report from the FTC—*Serving Communities of Color*—found that people living in majority-Black and Latino communities were more likely to experience problems with credit bureaus, banks and lenders, and used car issues than those living in majority-white communities. That is why my Administration is reviving the Government's top consumer watchdog, the Consumer Financial Protection Bureau, to address racial disparities in access to loans, capital, and credit, while protecting consumers in historically underserved communities.

As a Nation, let us work together to create an environment that protects and educates American consumers and communities. This National Consumer Protection Week, and all year long, my Administration is committed to ensuring that every American has access to information that can help protect themselves and their communities. To learn more about these resources, please visit consumer.ftc.gov. To learn how to get involved with National Consumer Protection Week, you can visit ftc.gov/ncpw.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 6, 2022, through March 12, 2022, as National Consumer Protection Week. I call upon government officials, industry leaders, and advocates across the Nation

to share information about consumer protection and provide our citizens with information about their rights as consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 764, 765, 766, 768, and 785

[Docket No. FSA–2019–0005]

RIN 0560–AI43

Farm Loan Programs; Direct and Guaranteed Loan Changes, Certified Mediation Program, and Guaranteed Loans Maximum Interest Rates

AGENCY: Farm Service Agency, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) amends the Farm Loan Programs (FLP) regulations to implement certain provisions authorized by the Agricultural Improvement Act of 2018 (2018 Farm Bill). This rule revises the provisions on FLP loan limits, allows additional flexibility for loan applicants to meet the required farming experience, provides higher guarantee rates for lenders to provide credit to beginning farmers and socially disadvantaged farmers, provides additional program benefits for veterans, provides equitable relief to certain borrowers, allows borrowers who have received debt restructuring with a write down to receive Emergency loans (EM), and expands those issues that are covered under the agricultural Certified Mediation Program. In addition to the 2018 Farm Bill changes, FSA also amends the regulations for loan servicing relating to accepting cash payments and establishing a fee for dishonored checks; these are discretionary changes. The result of these changes will increase loan limits or improve the various loan programs to relieve some restrictions to participation or otherwise encourage participation. This rule also revises the way FSA will establish the maximum interest rates in response to the discontinuing publication of the London Interbank Offered Rate (LIBOR) interest rates. The result of these changes will enable FSA to provide clearer guidance on maximum interest rates and allow for more consistency across all lenders participating in the guaranteed loan program. In addition, this rule corrects references to supervised credit in the regulations.

DATES: Effective: March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Steven K. Ford; telephone: (202) 304–7932; email: *steven.ford2@usda.gov.* Persons with disabilities or who require alternative means for communications should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

FSA makes and services a variety of direct and guaranteed loans to farmers who are temporarily unable to obtain private commercial credit. FSA also provides credit counseling and supervision to direct loan borrowers, so they have a better chance for success. FSA loan applicants are often:

- Beginning farmers (BF) and socially disadvantaged (SDA) farmers who do not qualify for conventional loans because of insufficient net worth; or
- Established farmers who have suffered financial setbacks due to natural disasters or economic downturns.

FSA loans are tailored to a farmer's needs and may be used to buy farmland and to finance agricultural production.

2018 Farm Bill Changes

The following amendments made by this rule are non-discretionary and are mandated by the 2018 Farm Bill (Pub. L. 115–334). The majority of the changes were self-enacting and previously implemented by FSA; this rule updates the regulations to be consistent. The changes to the regulation will:

- Modify the existing 3-year farming experience requirement for Direct Farm Ownership loans (FO) by including additional items as acceptable experience;
- Increase the loan limit to $600,000 for Direct FOs and increase the loan limit to $1,750,000 for Guaranteed FOs (these are the base loan limit amounts as specified in the 2018 Farm Bill);
- Increase the Direct Operating loan (OL) limit to $400,000 and increase the Guaranteed OL limit to $1,750,000 (these are the base loan limit amounts as specified in the 2018 Farm Bill);
- Allow SDA farmers and BF applicants to receive a guarantee equal to 95 percent, rather than the otherwise applicable 90 percent guarantee;
- Expand the definition of and provide additional benefits for veteran farmers;
- Provide for equitable relief to certain direct loan borrowers acting in good faith who have not complied with loan program requirements after relying on a material action, advice, or non-action from an FSA official;
- Allow borrowers who have received restructuring with a write down to maintain eligibility for an EM; and
- Expand the scope of eligible issues and persons covered under the agricultural Certified Mediation Program.

The Guaranteed FO and Guaranteed OL limits described above are base amounts and have increased as a result of annual inflation adjustments since the 2018 Farm Bill became effective.[1] In addition to the 2018 Farm Bill changes, FSA is making additional discretionary policy changes including the removal of cash as an option for payments of FSA fees and loan installments and the inclusion of a fee for dishonored payments.

Throughout this rule, any reference to ''farm'' or ''farmer'' also includes ''ranch'' or ''rancher,'' respectively.

Farm Ownership Experience Requirement

Section 5101 of the 2018 Farm Bill amends section 302(b) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1922(b)) to expand what can be considered when evaluating whether the applicant meets the existing 3-year experience requirement for Direct FOs.

[1] The loan limit for Guaranteed FOs and OLs are adjusted annually based on the Prices Paid by Farmers Index that is published by the USDA National Agricultural Statistics Service. The loan limits specified in the 2018 Farm Bill are being included in the regulation to show the base amounts. If the loan limit is increased as a result of the annual adjustment, the new loan limit will be announced on the FSA web page (*www.fsa.usda.gov*); the loan limit will not be decreased based on the annual adjustment. The current adjusted loan limit for Guaranteed FOs and OLs is $1,825,000.

To qualify for a Direct FO, 7 CFR 764.152(d) states that applicants must have participated in the business operations of a farm for at least 3 out of the 10 years prior to the date the application is submitted.

The authorizing legislation in 7 U.S.C. 1922(b)(1) provides FSA with the general authority to substitute the 3-year management experience requirement with other acceptable experience. Prior to this rule, 7 CFR 764.152(d) specified that, for all applicants, 1 of these 3 years could be substituted with one of the following experiences:

- Postsecondary education in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields;
- Significant business management experience; or
- Leadership or management experience while serving in any branch of the military.

Section 5101 expands these allowances, including additional education options, experience with another farm operation, mentorships in day-to-day farm management, honorable discharge from service in the armed forces, and similar experiences for BFs. These options address the different ways in which farmers can learn about managing a farm operation. Given the general authority under 7 U.S.C. 1922(b)(1)(iv), FSA chooses to allow these alternative experiences to apply to all farmers, not just BFs. Section 5101 also allows any two of these allowances to be substituted for 2 years instead of 1 year. Furthermore, this experience requirement may be waived altogether if the farmer has at least 1-year experience as hired farm labor with substantial management responsibilities and has a documented established relationship with an individual who has experience in farming and is a mentor with a Service Corps of Retired Executives (SCORE) program. In the alternative to SCORE, section 5101 allows other individuals or organizations that are committed to mentoring, are local, and approved by the Secretary, to serve as a mentor. FSA will approve documented mentorships on a case-by-case basis and requires mentors to be local individuals who are experienced farmers or farm-related businesspersons able to provide individualized assistance to FSA's borrowers.

This rule amends the eligibility requirement in § 764.152(d) to list the alternatives that can be substituted to meet the farm experience requirement. These additions provide flexibility for BF applicants to meet FSA's Direct FO eligibility rules and access the credit needed to finance farm operations without compromising the managerial standards this requirement was designed to ensure.

FO Limits

Section 5103 of the 2018 Farm Bill amends section 305 of the CONACT (7 U.S.C. 1925) to increase the maximum limits for the Direct and Guaranteed FO programs. The loan limits have increased to $600,000 for Direct FOs and $1,750,000 for Guaranteed FOs.

Prior to the 2018 Farm Bill the loan limit for Direct FOs was $300,000. Loan limits for Guaranteed FOs, which increase annually based on inflation, were at $1,429,000 prior to the 2018 Farm Bill.

These increased loan limits are necessary to assist farmers in their ability to respond to the rising costs of farmland. The loan limit changes also will enable more farmers to participate in loan programs. Direct loan limits were last increased in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill; Pub. L. 110–246). Rising farmland prices since that time have made it increasingly difficult for BFs to purchase farmland within the previous $300,000 Direct FO limit. Many FSA loans are made in conjunction with financing from commercial lenders; however, as prices continue to rise joint financing arrangements have become less effective to meet demand, particularly from BFs looking to purchase real estate.

This rule amends 7 CFR 761.8 to increase the Direct and Guaranteed FO loan limits. In addition, § 761.8(a)(4) and (6) are being amended to increase the limits for combined program assistance reflecting these increased loan limits. The increase will help family farmers better compete with larger, more financially secure farmers when purchasing farmland. The amount of the increase is modest and will not change the type of farm operation receiving FSA loans.

Farm OL Limits

Section 5201 of the 2018 Farm Bill amends section 313 of the CONACT (7 U.S.C. 1943) to increase the loan limits for the Direct and Guaranteed OL programs. The loan limits have increased to $400,000 for Direct OLs and $1,750,000 for Guaranteed OL.

Prior to the 2018 Farm Bill the loan limit for Direct OLs was $300,000. The loan limits for Guaranteed OLs, which increase annually based on inflation, were at $1,429,000 prior to the 2018 Farm Bill.

The 2018 Farm Bill modified the loan limits to better assist farmers with the increasing cost of operating and family living expenses. Direct and Guaranteed OLs are critical for farmers when purchasing crop inputs, livestock feed, farm equipment, and other operating expenses. Since direct loan limits were last increased in the 2008 Farm Bill, the cost for farm equipment and operating expenses have risen significantly. The additional operating credit available to farmers will assist in responding to this inflation and help them to continue to operate.

This rule amends 7 CFR 761.8 to increase the loan limits for Direct and Guaranteed OLs. The increase in the loan limits will give BFs access to the credit necessary to finance farm operations at today's costs.

95 Percent Guarantee for SDA Farmers and BF Applicants

Section 5306 of the 2018 Farm Bill amends the CONACT by adding section 367 (7 U.S.C. 2008b), which increases the percent of the FSA guarantee for Guaranteed FOs and OLs from 90 percent to 95 percent for a qualified BF or SDA farmer.

Previously, lenders could only receive a 95 percent guarantee (rather than the typical 90 percent) under limited circumstances such as refinancing FSA direct loan debt or participating in the Direct FO Down Payment Loan Program. The increase in the guaranteed loan percentage will give lenders more incentive to extend credit to BFs and SDA farmers, a traditionally underserved segment of farmers.

This rule amends § 762.129 to increase the Guaranteed FO and OL guarantee percentage on loans made to all applicants meeting the definition of ''beginning farmer'' or ''socially disadvantaged applicant or farmer.''

Veteran Farmers

Section 12306 of the 2018 Farm Bill amends section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279) and expands the definition of veteran farmer to include veterans who have first obtained status as a veteran during the most recent 10-year period, regardless of their previous farming experience. Specifically, this expanded definition includes any veteran who served in the active military, naval, or air service; and who was discharged or released from service under conditions other than dishonorable; and whose discharge was during the most recent 10-years from the date of application for a direct or guaranteed loan.

Section 12306 also amends section 310E of the CONACT (7 U.S.C. 1935) to include veteran farmers as eligible borrowers to receive direct Down

Payment loans, a program previously limited to BF applicants and SDA farmers. To encourage program participation and expand benefits for targeted groups, Down Payment Loan Program participants are not charged a fee when they receive a guaranteed loan in conjunction with a Down Payment loan. This change will ensure guarantee fees are also waived for veteran farmers obtaining a direct Down Payment loan. This rule amends 7 CFR 761.2, 762.130, 764.201, and 764.202 to include these changes.

EMs

Section 5307 of the 2018 Farm Bill amends section 373(b)(2)(B) of the CONACT (7 U.S.C. 2008h(b)(2)(B)) to allow borrowers who have received debt restructuring with a write down to maintain eligibility for an EM.

Prior to the 2018 Farm Bill, borrowers who had received debt forgiveness were ineligible for EM. This change addresses the concern that borrowers who have experienced a disaster, through no fault of their own, are suddenly unable to receive financial assistance and continue their operations. Borrowers who have received prior debt forgiveness through restructuring with a write down still have viable operations and FSA can now extend assistance to those current and past borrowers who have suffered from a disaster. While there are other ways debt forgiveness can be obtained through FSA, the 2018 Farm Bill expands EM eligibility only to those whose debt forgiveness was in conjunction with an approved debt restructuring plan.

This rule amends § 764.352 to allow borrowers who have received certain debt forgiveness to remain eligible for EM loans, allowing them access to the necessary credit to continue their operations.

Equitable Relief

Section 5305 of the 2018 Farm Bill amends the CONACT (7 U.S.C. 2008a) by adding provisions to provide FSA the authority to consider equitable relief under certain circumstances for FLP borrowers. Previously, there were no statutory provisions for equitable relief for FLP.

FSA is adding the definition of equitable relief to 7 CFR 761.2. Equitable relief, as included in the 2018 Farm Bill, allows FSA flexibility in working with existing borrower loan accounts that are determined to be in non-compliance with loan program requirements, if the borrower acted in good faith and relied on a material action of, advice of, or non-action from an FSA official. Adding the equitable relief definition will provide a common understanding of the term and allow reference to the term in other portions of the regulation while the specific details and process are provided in a newly added part of the regulation.

FSA is adding a new part, 7 CFR part 768, to address the requirements and conditions under which equitable relief can be provided. Under existing regulations, FSA has been required to determine noncompliant accounts as having received unauthorized assistance regardless of cause. Borrowers are then required to immediately repay the loan or convert it to a non-program loan subject to higher interest rates, less favorable terms, and limited loan servicing. Instances have arisen and may arise where borrowers are negatively impacted due to good faith reliance on a material action, advice, or non-action of an FSA official. The new provision allows FSA to consider relief in these specific instances to allow for more equitable rates, terms, and conditions to be applied to noncompliant accounts. The action, advice, or lack of action should be material to the non-compliance for the reliance to be in good faith as required by the 2018 Farm Bill. For example, it could be determined reasonable, given a certain set of facts, for a borrower to interpret the failure of a farm loan officer to respond to a borrower's statement that the borrower plans to sell FSA collateral as an approval of that action. Depending on the circumstances, the failure of the farm loan officer to advise of the consequences of such an action (non-compliance) in response to that information from the borrower may constitute a material lack of action under the regulation. In contrast, minor customer service issues, such as a failure by FSA to make a courtesy reminder phone call under FSA policy to a borrower would not rise to the requisite level of materiality. Repeated or more significant customer service failures could rise to the level of material failures based on a case-by-case determination, but such customer service issues, especially where disparate levels of service arise across FSA's customer base, should also be addressed through other technical service initiatives and outreach programs.

The action, advice, or lack of action relied upon by the borrower should also ordinarily be documented, but there may be situations where documentation is not reasonably available (for example, where the interaction with FSA was verbal). In those situations, the FSA official with authority to grant equitable relief may determine that contemporaneous documentation is not necessary. A lack of documentation on its own should not be held against the borrower. All determinations of equitable relief, however, must be documented with an explanation of the determining official's basis for providing that relief.

Impacted borrowers may be required to assist in the resolution of the noncompliance, provided the borrower agrees that these actions are not detrimental to the long-term viability of the borrower's operation; by taking such actions as partially repaying debt, disposing of assets, changing operation or entity structure, and other necessary actions to return to compliance and or eligibility. The 2018 Farm Bill also specifies that equitable relief decisions are not subject to appeal or judicial review.

Certified Mediation Program

Section 5402 of the 2018 Farm Bill amends section 501(c) of the Agricultural Credit Act of 1987 (7 U.S.C. 5101(c)) to expand the scope of issues for which mediation may be provided.

Section 5402(a)(1)(A)(ii) of the 2018 Farm Bill provides that in addition to compliance with farm programs and conservation programs, national organic program issues may now be mediated. Under the existing regulation, the Certified Mediation Program may mediate pesticide use issues that fall under the jurisdiction of USDA; this has not changed as a result of the 2018 Farm Bill. Under the 2018 Farm Bill's new provision, issues involving pesticide use may be a covered issue for mediation when it involves organic producers outside of USDA programs. In addition, organic certification-related disputes with the local agencies that USDA has accredited to provide the certification may also be eligible for mediation.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill provides that lease issues, including land and equipment leases, may be issues covered by mediation programs. As leasing is a common farm practice, disputes can and do occur between farmers and their landlords or lessors. Increased restrictions in agricultural leases or the loss of a lease can have negative impacts on a farm's viability. Mediation may help resolve disputes at the early stages and enable farmers to retain land or property under their leases.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill also includes family farm transition as an issue for which mediation services may be provided. Farm families are frequently involved in transition issues, which may include land division, asset and debt

distribution, individual and business responsibility for repayment of farm loans, farm viability, managing interests and responsibilities of off-farm heirs, and intergenerational conflict and responsibilities. Unresolved family conflicts often complicate the process when FSA is considering making loans to an operation as well as taking loan servicing actions. Using mediation to resolve farm transition disputes has the potential to keep farms viable. Resolving such disputes and developing a sound business plan helps both FSA and the farmers, as FSA or other creditors may make loans and help keep farmers in compliance with loan or other program requirements.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill further provides that mediation may be used to help resolve farmer-neighbor conflicts. As rural areas are developed, farmers are being increasingly faced with neighbors who are unfamiliar with, and at times unsympathetic to, typical and essential farming practices. Neighbors might complain about a farm's noise, hours, dust, pesticide application, manure management, odors, and runoff. Conflicts may also occur with municipal ordinances, for example fence height limits, impervious cover limitations, and prohibitions on specific farming activities. Such disputes may escalate into conflicts involving multiple stakeholders that can result in legal fees, which may have a negative impact on a farm's viability and ability to access credit and pay debts.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill provides for mediation of such other issues as the USDA Secretary or head of a State Department of Agriculture of each participating State considers appropriate for better serving the agricultural community and persons eligible for mediation. This rule, therefore, amends 7 CFR 785.3 to provide that the list of additional issues to be mediated will be included in the certification and recertification request.

Section 5402(a)(1)(B) of the 2018 Farm Bill provides that mediation grant funding may be used to provide credit counseling to covered persons before the initiation of mediation for issues involving USDA or for issues unrelated to any ongoing dispute or mediation in which the USDA is a party.

Further, section 5402(a)(2)(C) of the 2018 Farm Bill expanded the universe of eligible persons to include any other person involved in an issue for which mediation services are provided by a Certified Mediation Program. The current definition provides that producers, their creditors (as applicable), and other persons directly affected by certain actions of USDA are considered ''covered persons.'' This rule, therefore, amends 7 CFR 785.2 to revise the definition of ''covered persons.''

This rule also amends 7 CFR 785.4(c) introductory text and (c)(1) to provide that grant funds may be used for allowable costs in mediating covered issues for covered persons. This rule amends the list of the covered issues in 7 CFR 785.4(d) to reflect the additions made by the 2018 Farm Bill.

In addition, a correction is being made in § 785.4(c); the reference to § 785.3(b)(2) is being corrected to § 785.3(a)(2), and in the introductory text in § 785.9, the reference to 2 CFR 200.333 is being corrected to 2 CFR 200.334. Also, in § 785.9, the recordkeeping requirement is being changed from 5 years to 3 years because that is standard for the Federal Government records. For consistency, edits are being made throughout 7 CFR part 785 for references to the Certified Mediation Program.

Dishonored Payment Fee

FSA is adding new section 7 CFR 761.11 to add a penalty fee for payments made by monetary instruments, such as checks, that are later dishonored by the payer's financial institution. Payments made to FSA that are later dishonored result in increased burdens on FSA payment system and the staff to make accounting corrections, notify borrowers, and reprocess payments. FSA will follow the U.S. Treasury statutory determination in 26 U.S.C. 6657. By making this revision, FSA will offset some of the cost associated with returned checks and anticipates that it will serve as a deterrent against future infractions.

Remove Cash as an Acceptable Form of Payment

FSA is revising its Direct Loan Servicing regulations to remove references to cash payments as it will no longer accept cash as a form of payment on loans. This change will ensure borrower accounts are correctly credited for submitted payments since FSA payment systems are not designed to accept cash payments. In addition, the current process for cash payments is inefficient. Currently cash payments involve a two-step process. Employees have to travel to a financial institution to obtain a money order or cashier's check and then have that money order or cashier's check used for payment processing, resulting in risk or additional risk of loss when using paper-based money for employees and customers from, for example, improper handling and human error. The regulatory change will require that borrowers provide FSA with a form of payment that can be correctly and immediately processed into FSA's payment system. FSA has analyzed the change to cash and determined that this change will result in minimal impact on customers, will save time and expense, eliminate risk, and is consistent with many electronic commerce initiatives being implemented throughout USDA.

The change is consistent with the U.S. Department of the Treasury's requirement to accept electronic payments and to meet Federal cash-management laws (see U.S. Treasury Bulletin No. 2017–12).

This rule amends 7 CFR 765.151, 765.152, and 765.155, and 766.355 to remove the term cash.

Maximum Interest Rates

The regulations in 7 CFR 762.124 specify the interest rate rules governing guaranteed loan program loans. Prior to this rule, the regulation allowed lenders to charge a maximum interest rate at loan closing or restructuring no greater than the 3-month LIBOR for loans with rates fixed less than 5-years, or the 5-year Treasury note rate for loans with rates fixed for 5 or more years, plus an allowable markup.[2] FSA had also included an alternative method for lenders using a risk-based pricing model. These lenders were allowed to charge a rate no greater than the rate one risk tier lower than the borrower would qualify for without a guarantee.

In July 2017, the U.K. Financial Conduct Authority announced they would phase out LIBOR interest rates, ending publication in December 2021. Since 7 CFR 762.124 specifically included LIBOR as a rate that guaranteed loans may not exceed, FSA is amending § 762.124 to allow for a replacement rate comparison.

FSA monitors the interest rates charged on its loans monthly, comparing closed loans' rates to the LIBOR and Treasury thresholds. Historically, very few loans have been closed with an interest rate at or near the maximum rates allowed, regardless of the interest rate method the respective lenders operated under.

FSA will replace use of the 3-month LIBOR rate with the Secured Overnight Financing Rate (which is also known as SOFR) which was established by the industry as an alternative to LIBOR

[2] There are two maximum interest rates that depend on the length of the loan—one is for shorter term loans and the other is for longer term loans. The maximum interest rates are set using a base rate plus an allowable markup.

before LIBOR starts to phase out in December 2021.

FSA will continue to analyze agricultural lending pricing policies and consider any changes in industry loan pricing practices as a result of the discontinuation of LIBOR, lender pricing practices, economic shocks, and financial market changes. Based on this analysis, FSA will determine appropriate short-term maximum interest rates going forward, whether using SOFR or another rate, and will post them on the FSA website. FSA does not plan to make any changes to the use of the 5-year Treasury rate basis plus markup for longer term loans. In order to be flexible in response to changes in financial markets and other related factors and to ensure the best rates are used to benefit borrowers and lenders to ensure the success of the farm loans, we have determined that the maximum interest rates are more appropriately announced through the FSA website instead of specifying the specific indexes that are being used by FSA in the regulation.

FSA's intent with this rule is not to reduce the rate charged to guaranteed loan borrowers, or to reduce lender's profit margin on loans. Rather, the purpose of this rule change is to simplify maximum interest rate compliance for both lenders and FSA's staff. FSA's intent is to select a replacement rate as close to the current LIBOR rates as possible to minimize any impact on lenders and guaranteed loan borrowers.

There has also been a concern from FSA staff and lenders about the effectiveness of the risk-based pricing method in the regulation. FSA included it as an alternative method to establish a maximum interest rate for lenders using a formal risk-based pricing method. FSA added the option to the regulation in 2013; both the agency and lenders have had difficulty in trying to use the option, as explained below.

There are multiple approaches that lenders use to implement risk-based pricing and many are more complex than the simple tier system envisioned when this method was added to the regulation. Lender policies include other factors beyond loan risk. Many include separate tiers for default risk and loss risk, allow for considerable analyst judgement using subjective factors, and may allow exceptions to policies based on local market competition.

Lenders have also expressed frustration with the risk-based pricing method in the regulation. Many are reluctant to share internal interest rate practices or formulas and their credit staff are not aware of the one tier better requirement, even several years later after considerable training. As a result, lender loan narratives frequently lack a description of the interest rate tier adjustment and FSA is unable to determine at loan approval whether or not the proposed interest rate complies with FSA rules. Therefore, FSA has relied primarily on post-closing lender file reviews to confirm compliance with interest rate regulations.

This rule amends § 762.124 by removing the risk-based interest rate alternative and places all lenders under the same base rates plus allowable markup depending on the length of the loan.

Crop Insurance Violations

FSA is adding a paragraph to § 762.120 to clarify that guaranteed loan applicants must not be ineligible for assistance due to disqualification resulting from a Federal Crop Insurance violation according to 7 CFR part 718. This restriction already applies to FSA guaranteed loan applicants; however, FSA is adding this provision to 7 CFR 762.120 for consistency with an identical limitation in the regulations for FSA's direct loan applicants in 7 CFR 764.101(h).

Corrections

On August 9, 2021, FSA published a final rule titled ''Heirs' Property Relending Program (HPRP), Improving Farm Loan Program Delivery, and Streamlining Oversight Activities'' (86 FR 43381—43397) in which FSA replaced the outdated term ''supervised credit,'' with the term ''progression lending'' or similar pro-graduation terminology. While most references were updated, several references were inadvertently left unchanged. Therefore, the reference to ''supervised credit'' wherever it appears in § 761.1(c) is replaced with the term ''progression lending,'' the reference to ''supervisory agreements'' is replaced with the term ''progression lending plans'' in § 761.102(b)(1), and the term ''supervisory needs'' is replaced with the term ''progression lending needs'' in § 761.103(a)(2).

That August 2021 final rule also amended the regulations concerning limited resource reviews in 7 CFR part 765. As a result of that change, the paragraphs in 7 CFR 766.107 and 766.108 concerning these reviews are no longer necessary and this rule is removing them.

In reviewing the regulations, FSA noticed an inconsistency that needs to be addressed to avoid confusion and reduce program delivery errors. Specifically, 7 CFR 764.40(d) specifies that title insurance or final title opinion can be waived when, among other things, the loan amount is less than $10,000. FSA is amending the regulation to increase that amount to $25,000.00 to be consistent with EM title requirements in 7 CFR 764.355(d) and (e).

Effective Date, Notice, and Comment

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves any specified actions, including matters related to loans. In addition, because this rule is exempt from the requirements in 5 U.S.C. 553, it is also exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the agency being required to issue a proposed rule by section 553 or any other law, and the definition of rule in 5 U.S.C. 601 is also tied to the publication of a proposed rule.

The rule is not a major rule under Congressional Review Act. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Therefore, this rule is effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits to loans apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this rule and an analysis of costs and

benefits to loans is not required under either Executive Order 12866 or 13563.

Environmental Review

This rule revises the provisions on FLP loan limits and servicing. The result of these changes will increase loan limits or improve the various loan programs and relieve some restrictions to participation or otherwise encourage participation. This rule includes changes mandated by the 2018 Farm Bill and discretionary technical amendments that are administrative in nature. All discretionary aspects of these loan actions are covered by the Categorical Exclusions in 7 CFR 799.31(b). The discretionary provisions of this action are covered by the Categorical Exclusions, found in 7 CFR 799.31(b)(2)(iii) for minor amendments or revisions to previously approved actions, and § 799.31(b)(3)(i), for the issuance of minor technical corrections to regulations. No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of the discretionary technical amendments provided in this rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as the environmental screening documentation of the programmatic environmental compliance decision for this Federal action.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications that required Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1, 2019, at the National Museum of the American Indian, in Washington, DC. The portion of the Tribal Consultation relative to this rule was conducted by USDA Farm Production and Conservation mission area, as part of the Title V session. There were no specific comments from Tribes on this rule during Tribal consultation. If a Tribe requests additional comments, FSA will work with the Office of Tribal Relations to ensure meaningful consultation is provided for modifications identified in this rule that are not expressly mandated by legislation.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II for State, local, or Tribal governments, or private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs, listed in the Catalog of Federal Domestic Assistance, to which this rule applies are:

10.099 Conservation Loans;
10.404 Emergency Loans;
10.406 Farm Operating Loans;
10.407 Farm Ownership Loans.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), this rule does not change the approved information collection under OMB control numbers 0560–0155, 0560–0233, 0560–0236, 0560–0237, 0560–0238 and 0560–0230.

USDA Non-Discrimination Policy

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

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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List of Subjects

7 CFR Part 761

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 762

Agriculture, Banks, Banking, Credit, Loan programs—agriculture.

7 CFR Part 764

Agriculture, Credit, Loan programs—agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 768

Agriculture, Credit, Loan programs—agriculture.

7 CFR Part 785

Agriculture, Federal-state relations, Grant programs—intergovernmental relations, Mediation programs.

For the reasons discussed above, FSA amends 7 CFR parts 761, 762, 764, 765, 766, 768, and 785 as follows:

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

§ 761.1 [Amended]

■ 2. In § 761.1(c), remove ''Parts 761 through 767'' and ''supervised credit'' wherever they appear and add ''This part and parts 762 through 767 of this subchapter'' and ''progression lending'' in their places, respectively.

■ 3. Amend § 761.2(b) as follows:

■ a. Add the definition of ''Equitable relief'' in alphabetical order; and

■ b. In the definition of ''Veteran farmer'':

■ i. Redesignate paragraphs (1) and (2) as paragraphs (i) and (ii);

■ ii. In newly redesignated paragraph (i):

■ A. Remove the word ''has'' and add ''Has'' in its place; and

■ B. Remove the word ''or''; and

■ iii. In newly redesignated paragraph (ii), remove ''has'' and the period at the end and add ''Has'' and ''; or'' in their places, respectively; and

■ iv. Add paragraph (iii).

The additions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Equitable relief means waiving a requirement for Direct Farm Ownership, Direct Farm Operating, or Direct Emergency loans when the borrower is not in compliance with loan program requirements, but acted in good faith and relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation.

* * * * *

Veteran farmer * * *

(iii) Is a veteran who served in the active military, naval, or air service, and who was discharged or released from that service under conditions other than dishonorable and who first obtained status as a veteran during the most recent 10-year period.

* * * * *

§ 761.8 [Amended]

■ 4. Amend § 761.8 as follows:

■ a. In paragraph (a)(1)(i), remove the dollar amount ''$300,000'' and add ''$600,000'' in its place;

■ b. In paragraphs (a)(1)(ii) and (iii), remove ''$700,000'' and ''2000'' and add ''$1,750,000'' and ''2019'' in their places, respectively;

■ c. In paragraph (a)(2)(i), remove the dollar amount ''$300,000'' and add ''$400,000'' in its place;

■ d. In paragraphs (a)(2)(ii) and (iii) and (a)(3), remove ''$700,000'' and ''2000'' and add ''$1,750,000'' and ''2019'' in their places, respectively;

■ e. In paragraph (a)(4), remove the dollar amount ''$300,000'' and add ''$600,000'' in its place; and

■ f. In paragraph (a)(6), remove ''guaranteed Farm Ownership'' and ''$800,000'' and add ''guaranteed Farm Ownership loan'' and ''$1,100,000'' in their places, respectively.

■ 5. Add § 761.11 to read as follows:

§ 761.11 Dishonored payment fee.

(a) The Agency will charge a fee for payment transactions that are returned for insufficient funds.

(b) [Reserved]

Subpart C—Progression Lending

■ 6. In § 761.102, revise the section heading and paragraph (b)(1) to read as follows:

§ 761.102 Borrower recordkeeping and reporting.

* * * * *

(b) * * *

(1) Cooperate with the Agency and comply with all progression lending plans, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents;

* * * * *

§ 761.103 [Amended]

■ 7. In § 761.103(a)(2), remove the word ''supervisory'' and add ''progression lending'' in its place.

PART 762—GUARANTEED FARM LOANS

■ 8. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

■ 9. In § 762.120, add paragraph (o) to read as follows:

§ 762.120 Applicant eligibility.

* * * * *

(o) *Disqualification.* The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from a Federal Crop Insurance violation, according to 7 CFR part 718.

§ 762.124 [Amended]

■ 10. Amend § 762.124 as follows:

■ a. In paragraph (a)(3) introductory text, remove the words ''the following, as applicable:'' and adding ''the rates established and announced by the Agency on the FSA website (*www.fsa.usda.gov*).'';

■ b. Remove paragraphs (a)(3)(i) through (iii); and

■ c. Remove paragraph (a)(4) and redesignate paragraphs (a)(5) and (6) as paragraphs (a)(4) and (5).

■ 11. Amend § 762.129 as follows:

■ a. Revise paragraph (b)(1); and

■ b. In paragraph (b)(2)(i), remove the acronym ''SDA'' and add ''socially disadvantaged'' in its place.

The revision reads as follows:

§ 762.129 Percent of guarantee and maximum loss.

* * * * *

(b) * * *

(1) For OLs and FOs, the guarantee will be issued at 95 percent when:

(i) The sole purpose of a guaranteed FO or OL is to refinance an Agency direct farm loan and when only a portion of the loan is used to refinance a direct Agency loan, a weighted percentage of a guarantee will be provided;

(ii) The purpose of a guaranteed FO is to participate in the down payment loan program;

(iii) A guaranteed OL is made to a farmer who is participating in the Agency's down payment loan program. The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding;

(iv) A guaranteed OL is made to a farmer whose farm land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe;

(v) A guaranteed FO or OL is made to a qualified socially disadvantaged farmer; or

(vi) A guaranteed FO or OL is made to a qualified beginning farmer.

* * * * *

§ 762.130 [Amended]

■ 12. In § 762.130(d)(4)(iii)(C), remove the words ''beginning or socially disadvantaged'' and adding ''beginning, socially disadvantaged, or veteran'' in their place.

PART 764—DIRECT LOAN MAKING

■ 13. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart D—Farm Ownership Loan Program

■ 14. In § 764.152, revise the section heading and paragraph (d) to read as follows:

§ 764.152 General eligibility requirements.

* * * * *

(d) And in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

(1) The following experiences can substitute for up to 2 of the 3 years:

(i) Not less than 16 credit hours of post-secondary education in an agriculture-related field;

(ii) Successful completion of a farm management curriculum offered by a cooperative extension service, community college, adult vocational agriculture program, non-profit organization, or land-grant college or university;

(iii) One (1)-year experience as a farm laborer with substantial management responsibility;

(iv) Successful completion of an internship, mentorship, or apprenticeship in day-to-day farm management;

(v) Significant business management experience;

(vi) Honorable discharge from the armed forces of the United States;

(vii) Successful repayment of an FSA financed youth loan; or

(viii) Established relationship with a counselor in the Service Corps of Retired Executives (SCORE) program who has experience in farming or ranching, or with Agency-approved local individuals or organizations that are committed to providing mentorship in farming or ranching; or

(2) The 3-year requirement in this paragraph (d) will be waived if the applicant meets the requirements of both paragraphs (d)(1)(iii) and (viii) of this section.

* * * * *

Subpart E—Downpayment Loan Program

§ 764.201 [Amended]

■ 15. In § 764.201, remove the words ''beginning farmer or socially disadvantaged'' and adding ''beginning farmer, socially disadvantaged farmer, or veteran farmer'' in their place.

■ 16. In § 764.202, revise paragraph (b) to read as follows:

§ 764.202 Eligibility requirements.

* * * * *

(b) Be a beginning farmer, socially disadvantaged farmer, or veteran farmer.

Subpart I—Emergency Loan Program

■ 17. Amend § 764.352 as follows:

■ a. In paragraphs (a) and (b), remove the semicolon and add a period it its place;

■ b. In paragraph (c)(3)(i), remove the semicolon and add ''; and'' in its place;

■ c. In paragraphs (c)(3)(ii), (d), and (e)(3) and (4), remove the semicolon and add a period in its place; and

■ d. Revise paragraph (f).

The revision reads as follows:

§ 764.352 Eligibility requirements.

* * * * *

(f) And all entity members in the case of an entity, must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996. A write down associated with a restructuring action under Section 353 of the Act is not considered debt forgiveness for EM Loan purposes.

* * * * *

Subpart J—Loan Decision and Closing

§ 764.402 [Amended]

■ 18. In § 764.402(d)(1)(i), remove the dollar amount ''$10,000'' and add ''$25,000'' in its place.

PART 765—DIRECT LOAN SERVICING—REGULAR

■ 19. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart D—Borrower Payments

■ 20. In § 765.151, revise paragraph (a) to read as follows:

§ 765.151 Handling payments.

(a) *Borrower payments.* Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, cash, foreign currency, foreign checks, and sight drafts.

* * * * *

§ 765.152 [Amended]

■ 21. In § 765.152(b)(4), remove the words ''Cash proceeds'' and adding ''Proceeds'' in their place.

§ 765.155 [Amended]

■ 22. In § 765.155, remove paragraph (a)(1)(i) and redesignate paragraphs (a)(1)(ii) through (iv) as paragraphs (a)(1)(i) through (iii).

PART 766—DIRECT LOAN SERVICING–SPECIAL

■ 23. The authority citation for part 766 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 1981d(c).

Subpart C—Loan Servicing Programs

§ 766.107 [Amended]

■ 24. In § 766.107, remove paragraph (d)(4).

§ 766.108 [Amended]

■ 25. In § 766.108, remove paragraph (c)(4) and redesignate paragraph (c)(5) as paragraph (c)(4).

Subpart H—Loan Liquidation

■ 26. In § 766.355, revise paragraph (c)(1) to read as follows:

§ 766.355 Acceleration of loans.

* * * * *

(c) * * *

(1) Pay the account in full;

* * * * *

■ 27. Add part 768, consisting of §§ 768.1 and 768.2, to read as follows:

PART 768—EQUITABLE RELIEF

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 768.1 Providing equitable relief.

(a) If the Farm Service Agency (Agency or FSA) determines that a borrower is not in compliance with Agency loan requirements in this chapter, the Agency may consider equitable relief as specified in this section:

(1) *Requirements.* After determination that a borrower is in noncompliance with loan program requirements in this chapter, the Agency may provide equitable relief to a borrower if it is determined that the borrower:

(i) Acted in good faith; and

(ii) Relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation or the action approved by the Agency official resulted in the borrower becoming noncompliant with the loan program requirements in this chapter.

(2) *Determination.* The material action, advice, or response from an Agency official under paragraph (a)(1) of this section must be documented, unless the Agency official with authority to grant equitable relief determines that documentation is not reasonably available. Notwithstanding any delegations in this chapter, only the Secretary, FSA Administrator, Deputy Administrator for Farm Loan Programs, or any other official within U.S. Department of Agriculture (USDA) specifically designated by the Secretary, may make the determination for the Agency to grant equitable relief and must document the basis for that determination.

(3) *Relief.* If the borrower meets the requirements in paragraph (a)(1) of this section, the Agency may provide to a borrower either or both of the following forms of equitable relief:

(i) The borrower may choose to keep loans at current rates or other terms received in association with the loan which was determined to be noncompliant; or

(ii) The borrower may receive other equitable relief for the loan as the Agency determines to be appropriate.

(4) *Conditions.* As a condition of receiving relief, the Agency may require the borrower to take actions to remedy the noncompliance, provided the borrower agrees those actions do not adversely affect the long-term viability of the borrower's operation.

(b) A determination or action of the Agency under this section is final and not subject to administrative appeal or judicial review.

§ 768.2 [Reserved]

PART 785—CERTIFIED MEDIATION PROGRAM

■ 28. The authority citation for part 785 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5101–5104.

■ 29. Revise the heading for part 785 to read as set forth above.

§ 785.1 [Amended]

■ 30. Amend § 785.1 as follows:

■ a. In paragraph (b), remove ''USDA'', ''certified State mediation program'', ''State's certified mediation program'', and ''appeals regulations'' and add ''U.S. Department of Agriculture (USDA)'', ''Certified Mediation Program'', ''State's Certified Mediation Program'', ''appeals regulations in this chapter'' in their places, respectively;

■ b. In paragraph (d), remove the words ''program certified'' and add ''Certified Mediation Program'' in their place; and

■ c. In paragraph (e), remove the words ''program certified'' and ''This provision'' and add ''Certified Mediation Program'' and ''This paragraph (e)'' in their places, respectively.

■ 31. Amend § 785.2 as follows:

■ a. Remove the definition for ''Certified State mediation program'' and add the definition for ''Certified Mediation Program'' in its place;

■ b. Revise the definition of ''Covered persons'';

■ c. In the definition for ''Mediation services'', remove the words ''State mediation program'' and add ''Certified Mediation Program'' in their place; and

■ d. In the definition for ''Qualifying State'', remove the words ''State mediation program'' and add ''Certified Mediation Program'' in their place.

The addition and revision read as follows:

§ 785.2 Definitions.

* * * * *

Certified Mediation Program means a program providing mediation services that has been certified in accordance with § 785.3.

* * * * *

Covered persons means agricultural producers, their creditors (as applicable), persons directly affected by actions of the USDA, and any other persons involved in covered issues under § 785.4(d); for which mediation services are provided by a Certified Mediation Program.

* * * * *

■ 32. In § 785.3, revise the section heading, the introductory text, and paragraphs (a) introductory text and (a)(2)(vi) to read as follows:

§ 785.3 Annual certification of a State's Certified Mediation Program.

To obtain certification from FSA for the Certified Mediation Program, the State must meet the requirements of this section.

(a) *New request for certification.* A new request for certification of a State mediation program must include descriptive and supporting information regarding the mediation program and a certification that the mediation program meets certain requirements as prescribed in this section. If a State is also qualifying its mediation program to request a grant of Federal funds under the Certified Mediation Program, the State must submit with its request for certification additional information as specified in § 785.4.

* * * * *

(2) * * *

(vi) That the State's Certified Mediation Program ensures, in the case of other issues covered by the Certified Mediation Program, that:

(A) USDA receives adequate notification of those issues by the deadline specified in § 785.6(a)(1); and

(B) Persons directly affected by actions of USDA receive adequate notification of the Certified Mediation Program; and

* * * * *

■ 33. Amend § 785.4 as follows:

■ a. Revise the section heading;

■ b. In paragraph (a) introductory text, remove the words ''State mediation program'' and add ''State's Certified Mediation Program'' in their place;

■ c. In paragraph (b)(1), remove the words ''in any FSA office and on the internet,'' and add ''at'' in their place;

■ d. Revise paragraph (b)(2);

■ e. Revise paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2)(iv); and

■ f. Add paragraph (d).

The revisions and addition read as follows:

§ 785.4 Grants to States with a Certified Mediation Program.

* * * * *

(b) * * *

(2) A budget with supporting details providing estimates of the cost of operation and administration of the Certified Mediation Program. Proposed direct expenditures will be grouped in the categories of allowable direct costs under the Certified Mediation Program as specified in paragraph (c)(1) of this section;

* * * * *

(c) *Grant purposes.* Grants made under this part will be used only to pay the allowable costs of operation and administration of the components of a qualifying State's Certified Mediation Program that have been certified as specified in § 785.3(a)(2). Costs of services other than mediation services to covered issues and covered persons within the State are not considered part of the cost of operation and administration of the Certified Mediation Program for the purpose of determining the amount of a grant award.

(1) *Allowable costs.* Subject to applicable cost principles in 2 CFR part

200, subpart E, allowable costs for operations and administration are limited to those that are reasonable and necessary to carry out the State's Certified Mediation Program in providing mediation services for covered issues and covered persons within the State. Specific categories of costs allowable under the State's Certified Mediation Program include, and are limited to:

* * * * *

(2) * * *

(iv) Services provided by a State's Certified Mediation Program that are not consistent with the features of the Certified Mediation Program as specified in this part including advocacy services on behalf of a mediation participant, such as representation of a mediation client before an administrative appeals entity of the USDA or other Federal Government department or Federal or State Court proceeding.

(d) *Covered issues.* Covered issues include:

(1) Agricultural loans, regardless of whether the loans are made or guaranteed by USDA or made by a third party—mediation services must be provided; and

(2) The following issues for which mediation services may be provided to covered persons that are involved in one or more of the following:

(i) Wetlands determinations;

(ii) Compliance with farm programs, conservation programs, and the National Organic Program established under the Organic Foods Production Act of 1990;

(iii) Rural water loan programs;

(iv) Grazing on National Forest System lands;

(v) Pesticides;

(vi) Lease issues, including land leases and equipment leases;

(vii) Family farm transition;

(viii) Farmer-neighbor disputes;

(ix) Such other issues as the Secretary or the head of the Department of Agriculture of each participating State considers appropriate for better serving the agricultural community and persons eligible for mediation; or

(x) Credit counseling:

(A) Prior to the initiation of any mediation involving the USDA; or

(B) Unrelated to any ongoing dispute or mediation in which the USDA is a party.

■ 33. Revise § 785.5 to read as follows:

§ 785.5 Fees for mediation services.

A requirement that non-USDA parties who elect to participate in mediation pay a fee for mediation services will not preclude certification of a State's mediation program or its eligibility for a grant; however, if participation in mediation is mandatory for a USDA agency, a State's Certified Mediation Program may not require the USDA agency to pay a fee to participate in a mediation.

■ 34. In § 785.6, revise paragraph (a)(3) to read as follows:

§ 785.6 Deadlines and address.

(a) * * *

(3) *Requests for additional grant funds during a fiscal year.* Any request by a State's Certified Mediation Program, that is eligible for grant funding as of the beginning of the fiscal year, for additional grant funds during that fiscal year for additional, unbudgeted demands for mediation services must be submitted on or before March 1 of the fiscal year.

* * * * *

■ 35. Amend § 785.7 as follows:

■ a. In paragraph (a), remove the words ''certified State mediation program'' and add ''State's Certified Mediation Program'' in their place;

■ b. In paragraph (b)(3) introductory text, remove the words ''State program'' and add ''State's Certified Mediation Program'' in their place;

■ c. Revise paragraph (c)(1);

■ d. In paragraph (c)(2), remove the words ''certified State mediation program'' and add ''State's Certified Mediation Program'' in their place;

■ e. In paragraph (d)(1)(iii), remove the words ''certified State mediation programs'' and add ''Certified Mediation Program'' in their place; and

■ f. Revise paragraph (e)(1).

The revisions read as follows:

§ 785.7 Distribution of Federal grant funds.

* * * * *

(c) * * *

(1) Grant funds will be paid in advance, in installments throughout the Federal fiscal year as requested by a State's Certified Mediation Program and approved by FSA. The initial payment to a Certified Mediation Program in a qualifying State eligible for grant funding as of the beginning of a fiscal year will represent at least one-fourth of the State's annual grant award. The initial payment will be made as soon as practicable after certification, or re-certification, after grant funds are appropriated and available.

* * * * *

(e) * * *

(1) States receiving Certified Mediation Program grant funds are encouraged to obligate award funds within the Federal fiscal year of the award. A State may, however, carry forward any funds disbursed to its Certified Mediation Program that remain unobligated at the end of the fiscal year of award for use in the next fiscal year for costs resulting from obligations in the subsequent funding period. Any carryover balances plus any additional obligated fiscal year grant will not exceed the lesser of 70 percent of the State's budgeted allowable costs of operation and administration of the State's Certified Mediation Program for the subsequent fiscal year, or $500,000.

* * * * *

■ 36. Amend § 785.8 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. In paragraphs (a)(1) introductory text and (a)(1)(i), remove the words ''certified State mediation program'' and add ''State's Certified Mediation Program'' in their place;

■ c. In paragraph (a)(2) introductory text, remove the words ''certified mediation program'' and add ''State's Certified Mediation Program'' in their place; and

■ d. In paragraph (a)(2)(ii)(B), remove the word ''certified''.

The revision reads as follows:

§ 785.8 Reports by qualifying States receiving mediation grant funds.

(a) *Annual report by the State on its Certified Mediation Program.* No later than 30 days following the end of a fiscal year during which a qualifying State received a grant award under this part, the State must submit to the Administrator an annual report on its Certified Mediation Program. The annual report must include the following:

* * * * *

■ 37. In § 785.9, revise the introductory text and paragraph (c) to read as follows:

§ 785.9 Access to program records.

The regulations in 2 CFR 200.334 through 200.338 provide general record retention and access requirements for records pertaining to grants. In addition, the State must maintain and provide the Government access to pertinent records regarding services delivered by the State's Certified Mediation Program for purposes of evaluation, audit and monitoring of the State Certified Mediation Program as follows:

* * * * *

(c) All participants in a mediation must sign and date an acknowledgment of receipt of such notice from the mediator. The State's Certified Mediation Program must maintain originals of such acknowledgments in its mediation files for at least 3 years.

■ 38. In § 785.10, revise paragraphs (a) introductory text, (a)(1), (2), and (5), and (b) to read as follows:

§ 785.10 Penalty for non-compliance.

(a) The Administrator is authorized to withdraw the certification of a State's Certified Mediation Program, terminate or suspend the grant to the State's Certified Mediation Program, require a return of unspent grant funds, a reimbursement of grant funds on account of expenditures that are not allowed, and may impose any other penalties or sanctions authorized by law if the Administrator determines that:

(1) The State's Certified Mediation Program, at any time, does not meet the requirements in this part for certification;

(2) The State's Certified Mediation Program is not being operated in a manner consistent with the features of the program as certified by FSA, with the regulations in this part, or the grant agreement;

* * * * *

(5) Reports submitted by a State on its Certified Mediation Program as required by § 785.8 are false, contain misrepresentations or material omissions, or are otherwise misleading.

(b) In the event that FSA gives notice to the State of its intent to enforce any withdrawal of certification or other penalty for non-compliance, USDA agencies will cease to participate in any mediation conducted by the State's Certified Mediation Program immediately upon delivery of such notice to the State.

§ 785.11 [Amended]

■ 39. In § 785.11, remove the words ''State mediation program'' and adding ''State's Certified Mediation Program'' in their place wherever they appear.

§ 785.12 [Amended]

■ 40. In § 785.12, remove the cross reference ''parts 15, 15b and 1901, subpart E, of'' and adding ''parts 15 and 15b of'' in their place.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2022–04858 Filed 3–8–22; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–1141; Special Conditions No. 25–710A–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplanes; Non-Rechargeable Lithium-Ion Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions, amendment.

SUMMARY: These amended special conditions are issued for non-rechargeable lithium-ion battery installations on the Dassault Aviation (Dassault) Model Falcon 6X airplane. Non-rechargeable lithium-ion batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault on March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, AIR–623, Aircraft Systems Section, Technical Innovation Policy Branch, Policy and Innovation Division, Federal Aviation Administration, 2200 S 216th Street, Des Moines, Washington, 98198; telephone and fax 206–231–3171, email *nazih.khaouly@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2012, Dassault applied for special conditions for non-rechargeable lithium-ion batteries installed in the Model Falcon 5X airplane. Special conditions were issued for that design on January 16, 2018 (83 FR 2032). However, Dassault has decided not to release an airplane under the model designation Falcon 5X, instead choosing to change that model designation to Falcon 6X.

In February of 2018, due to engine supplier issues, Dassault extended the type certificate application date for its Model Falcon 5X airplane under new Model Falcon 6X. This amendment to the original special conditions reflects the model-name change. This airplane is a twin-engine business jet with seating for 19 passengers and a maximum takeoff weight of 77,460 pounds. The Dassault Model Falcon 6X airplane design remains unchanged from the Model Falcon 5X in all material respects other than different engines.

The FAA is issuing these special conditions for non-rechargeable lithium-ion battery installations on the Dassault Model Falcon 6X airplane. The FAA's design standards in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium-ion batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault must show that the Model Falcon 6X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–146.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 6X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 6X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17.

Novel or Unusual Design Feature

The Dassault Model Falcon 6X airplane will incorporate the following novel or unusual design feature: Installation of non-rechargeable lithium-ion batteries.

For the purpose of these special conditions, the FAA refers to a battery and battery system as a battery. A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or

outside of the battery. It also includes vents (where necessary) and packaging.

Discussion

The FAA derived the current regulations governing installation of batteries in transport-category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February 1965. This recodification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium-ion batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. Non-rechargeable lithium-ion batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery cell sizes and construction. Interconnection of these cells in battery packs introduce failure modes that require unique design considerations, such as provisions for thermal management.

In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *https://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium-ion battery in an emergency-locator transmitter installation demonstrated unanticipated failure modes. The United Kingdom's Air Accidents Investigation Branch Bulletin S5/2013 describes this event. These events involving rechargeable and non-rechargeable lithium-ion batteries prompted the FAA to initiate a broad evaluation of these energy-storage technologies.

On April 22, 2016, the FAA published special conditions no. 25–612–SC, in the **Federal Register** (81 FR 23573), applicable to Gulfstream Aerospace Corporation for the Model GVI airplane. Those were the first special conditions the FAA issued for non-rechargeable lithium-ion battery installations. In that document, the FAA explained its decision to make those special conditions effective on April 22, 2017, one year after publication in the **Federal Register**. In those special conditions, the FAA stated its intention to apply non-rechargeable lithium-ion battery special conditions to design changes on other airplane makes and models applied for after this same date.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium-ion battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

Special condition nos. 1 and 2 are intended to ensure that the non-rechargeable lithium-ion battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special conditions 3, 7, and 8 are self-explanatory.

Special condition no. 4 makes it clear that the flammable-fluid fire-protection requirements of § 25.863 apply to non-rechargeable lithium-ion battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable-fluid leakage from airplane systems. Non-rechargeable lithium-ion batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium-ion battery installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium-ion battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium-ion battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123. Sections 25.1353(b)(1) through (4) at Amendment 25–123 remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Final Special Conditions, Request for Comment Special Conditions No. 25–710–SC for the Dassault Model Falcon 5X airplane, which was published in the **Federal Register** on January 16, 2018 (83 FR 2032). No comments were received, and the special conditions are adopted as proposed, with amendments.

Applicability

These special conditions are applicable to the Dassault Model Falcon 6X airplane. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after the effective date.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium-ion battery installations where the only change is either cosmetic or to relocate the installation to improve the safety of the airplane and occupants. Previously certified non-rechargeable lithium-ion battery installations, as used in this paragraph, are those installations approved for certification projects applied for on or before the effective date of these special conditions. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation. These special conditions also are not applicable to unchanged, previously certified non-rechargeable lithium-ion battery installations that are affected by a change in a manner that improves the safety of its installation. The FAA determined that these exclusions are in the public interest because the need to meet all of the special conditions might otherwise deter these design changes that improve safety.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 6X airplane.

Non-Rechargeable Lithium-Ion Battery Installations

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123, each non-rechargeable lithium-ion battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure-sensing-and-warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a ''battery'' and ''battery system'' are referred to as a battery.

Issued in Kansas City, Missouri, on March 3, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–04935 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1073; Project Identifier MCAI–2020–01303–A; Amendment 39–21964; AD 2022–05–12]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Empresa Brasileira de Aeronáutica S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–12–08 for all Embraer S.A. Model EMB–505 airplanes. AD 2020–12–08 required inspections of the mass-balance weights of the elevators, ailerons, and rudder (flight control surfaces) and their attachment parts, and corrective actions if necessary, and revising the airworthiness limitation section (ALS) of the maintenance manual or instructions for continued airworthiness to incorporate new airworthiness limitations. This AD retains the actions required by AD 2020–12–08 and requires, for certain airplanes, cleaning and weighing certain mass-balances and installation or replacement, as applicable; and for certain other mass-balances for certain airplanes, replacement of those mass-balances. This AD was prompted by a determination that new applicable airplane serial numbers and new criteria for the replacement of affected parts are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 13, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 1, 2020 (85 FR 36312, June 16, 2020).

ADDRESSES: For service information identified in this final rule, contact Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, P.O. Box 36/2, São José dos Campos, 12227–901, Brazil; phone: +55 12 3927 1000; email: *phenom.reliability@embraer.com.br;* website: *https://www.embraer.com.br/en-US/Pages/home.aspx.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1073.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1073; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is Document Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–12–08, Amendment 39–21143 (85 FR 36312, June 16, 2020), (AD 2020–12–08). AD 2020–12–08 applied to all Embraer S.A. (type certificate previously held by Empresa Brasileira de Aeronáutica S.A.) Model EMB–505 airplanes and required for certain serial-numbered airplanes, inspecting the mass-balance weights of the flight control surfaces and their attachment parts for corrosion and fragmentation, and taking corrective actions if necessary, including sending inspection results to Embraer. For all airplanes, AD 2020–12–08 required revising the airworthiness limitation section of the maintenance manual or instructions for continued airworthiness to incorporate new airworthiness limitations.

The NPRM published in the **Federal Register** on September 9, 2021 (86 FR 50487). The NPRM was prompted by Brazilian AD 2020–09–01, dated September 8, 2020 (referred to after this as ''the MCAI''), issued by the Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil. The MCAI states:

It has been found the occurrence of corrosion in the mass-balance weights of the control surfaces. The corrosion may lead to loss of mass or detachment of the mass-balance weights, resulting in an unbalance control surface, which, in conjunction with certain flight conditions, could lead to flutter and possible loss of airplane control.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this [ANAC] AD in the indicated time limit.

After [ANAC] EAD [Emergency AD] 2020–01–01 was released, a reassessment of the unsafe condition by Embraer and, subsequently, the SB [service bulletin] 505–55–0004, revisions 0 and 1, dated March 25th, 2020 and June 24, 2020, respectively, expanding the list of affected aircraft serial numbers (S/Ns) as well as inserting more restrictive criteria to determine the replacement of affected P/Ns [part numbers].

Therefore, this [ANAC] AD retains the requirements of [ANAC] EAD 2020–01–01, which is superseded, and incorporates new applicable aircraft S/Ns and new criteria for the replacement of affected P/Ns.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1073.

In the NPRM, the FAA proposed to retain the actions required by AD 2020–12–08 and proposed to require, for certain airplanes, cleaning and weighing certain mass-balances and installation or replacement, as applicable; and for certain other mass-balances for certain airplanes, replacement of those mass-balances. In the NPRM, the FAA also proposed to remove the reporting required by AD 2020–12–08.

Ex Parte Contact

After the comment period closed, the FAA requested clarification from Embraer about airplane delivery documentation based on a comment from NetJets. A summary of this discussion can be found in the rulemaking docket at *https://www.regulations.gov* in Docket No. FAA–2020–1073.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Embraer and NetJets. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Add ''Required for Compliance'' Language

Embraer requested that the FAA revise the proposed AD to add language concerning steps in the service information that are ''Required for Compliance'' (RC). Specifically, the commenter requested the FAA add RC language that has been used in previous ADs for Embraer products, which states that steps labeled as RC must be done to comply with the AD, while steps not labeled as RC may be deviated from using accepted methods. The commenter noted that since the proposed AD specifies complying with several steps with an Embraer service bulletin, the RC method would be useful in avoiding the need for alternative methods of compliance (AMOCs).

The FAA adds the RC language requested by Embraer to ADs when the service information that is incorporated by reference in an AD contains steps with the ''RC'' notation. Because none of the steps in the service information incorporated by reference in this AD contain the ''RC'' notation, the language requested by the commenter is inapplicable. Additional information about the RC method can be found in FAA Advisory Circular (AC) No. 20–176A, *Service Bulletins Related to Airworthiness Directives and Indicating FAA Approval on Service Documents,* dated June 16, 2014.[1]

Request To Add Credit Service Information

In the NPRM, the FAA proposed to retain the actions in paragraph (h) of the AD, which required compliance with Embraer Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019 (SB505–55–A004R5). The FAA further proposed to allow credit for the actions in paragraph (h) of the AD if done previously using Embraer Alert Service Bulletin SB505–55–A004, Revision 06, dated March 25, 2020 (SB505–55–A004R06). For the new actions in paragraphs (l) through (n) of the proposed AD, the FAA proposed to require compliance with Embraer Service Bulletin SB505–55–0004, Revision 01, dated June 24, 2020 (SB505–55–0004R01). The FAA further proposed to allow credit for those actions if previously done using Embraer Service Bulletin SB505–55–0004, dated March 25, 2020.

NetJets requested that the FAA revise the proposed credit paragraphs to allow credit for actions required by paragraph (h) of the proposed AD if previously done using Embraer SB505–55–A004R5 and credit for actions required by paragraphs (l) through (n) of the proposed AD if previously done Embraer SB505–55–0004R01.

The FAA notes that paragraph (f) of this AD requires compliance unless already done. Thus, the AD already allows operators to take credit for the actions required by paragraphs (h), (l), (m), and (n) if done before the effective date of the AD. The commenter's requested changes are unnecessary.

Request To Revise Compliance Time

In the NPRM, the FAA retained certain actions and proposed new actions, with compliance times based on the age of the airplane. For the retained actions, the FAA proposed that the compliance time remain based on ''the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness.'' For the new actions, the FAA proposed compliance times since new, with a proposed definition of ''since new'' as ''since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness.''

NetJets requested the FAA change the proposed compliance time from ''within 60 months since new'' to ''within the next 60 months scheduled maintenance package.'' The commenter stated that, upon aircraft delivery, Embraer provides a recommended date to start counting calendar inspections and that this recommended start date does not always match the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness. NetJets stated it operates a large fleet of affected aircraft, and if the compliance dates in the AD do not align with the scheduled maintenance package based on Embraer's recommended state date, it could create an undue hardship, potential downtime, and lost revenue. With its comment, NetJets provided an example of an Embraer Technical Disposition (ETD) letter with a recommended start date for counting calendar inspections.

The FAA has determined that the compliance times, as proposed, correspond to the compliance times in the MCAI and will ensure an acceptable level of safety. The FAA notes that the change requested by the commenter would only affect some inspections required by the AD (those that require compliance within 60 months where the term ''since new'' is used). Accordingly, the change requested by the commenter would result in the compliance times for some of the new inspections not aligning with the compliance times for the other new inspections or with the retained actions. The FAA has not changed this AD in this regard. However, operators may propose a change in the compliance time in

[1] You can obtain a copy of this AC from the FAA's website at *https://www.faa.gov/regulations_policies/advisory_circulars/.*

accordance with the AMOC procedures specified in paragraph (p) of this AD.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Embraer Alert Service Bulletin SB505–55–A004, Revision 06, dated March 25, 2020. This service information specifies procedures for inspecting the mass-balance weights of the flight control surfaces and their respective attachment parts for corrosion and fragmentation, and performing corrective actions on certain serial-numbered Model EMB–505 airplanes. Corrective actions include installation of a stainless steel mass-balance, replacement of the mass-balance, and replacement of attachment parts.

The FAA also reviewed Embraer Service Bulletin SB505–55–0004, Revision 01, dated June 24, 2020. This service information specifies procedures, for certain airplanes, for cleaning and weighing the elevator, aileron, and rudder mass-balances, and installing or replacing the mass-balances (includes replacing attachment parts), as applicable, and for certain elevator mass-balances for certain airplanes, replacing those elevator mass-balances (includes replacing attachment parts).

Embraer has also issued Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019, which the Director of the Federal Register approved for incorporation by reference as of July 1, 2020 (85 FR 36312, June 16, 2020).

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

Other Related Service Information

Embraer has also issued Embraer Service Bulletin SB505–55–0004, dated March 25, 2020. The actions specified in Embraer Service Bulletin SB505–55–0004, dated March 25, 2020, are the same as those specified in Embraer SB505–55–0004R01; however, Embraer SB505–55–0004R01 was issued to add serial-numbered airplanes to the effectivity. No additional work is required for airplanes on which Embraer Service Bulletin SB505–55–0004, dated March 25, 2020, has been accomplished.

Differences Between This AD and the Service Information

Embraer SB505–55–A004R5 and Embraer SB505–55–A004R06 contain procedures for inspecting for the integrity of the mass-balance weights of flight control surfaces and their attachment parts. This AD does not include that requirement.

Costs of Compliance

The FAA estimates that this AD affects 392 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained inspections from AD 2020–12-08.	9 work-hours × $85 per hour = $765	$100	$865	$339,080.
Retained ALS revision from AD 2020–12–08.	1 work hour × 85 per hour = $85	$0	$85	$33,320.
New cleaning, weighing, and replacement.	Up to 130 work-hours × $85 per hour = Up to $11,050.	Up to $18,118	Up to $29,168	Up to $11,433,856.

The FAA estimates the following costs to do any necessary installations or replacements that would be required based on the results of the inspections and weighing. The FAA has no way of determining the number of aircraft that might need these actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Installation or replacement	Up to 129 work-hours × $85 per hour = Up to $10,965	Up to $18,118	Up to $29,083.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–12–08, Amendment 39–21143 (85 FR 36312, June 16, 2020); and

■ b. Adding the following new airworthiness directive:

2022–05–12 Embraer S.A. (Type Certificate previously held by Empresa Brasileira de Aeronáutica S.A.): Amendment 39–21964; Docket No. FAA–2020–1073; Project Identifier MCAI–2020–01303–A.

(a) Effective Date

This airworthiness directive (AD) is effective April 13, 2022.

(b) Affected ADs

This AD replaces AD 2020–12–08, Amendment 39–21143 (85 FR 36312, June 16, 2020) (AD 2020–12–08).

(c) Applicability

This AD applies to Embraer S.A. (type certificate previously held by Empresa Brasileira de Aeronáutica S.A.) Model EMB–505 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5520, Elevator Structure; 5540, Rudder Structure; and 5751, Ailerons.

(e) Unsafe Condition

This AD was prompted by reports of corrosion in the mass-balance weights of the flight control surfaces and a determination that new airworthiness limitations are necessary. The FAA is issuing this AD to address corrosion in the mass-balance weights of the flight control surfaces. The unsafe condition, if not addressed, could result in loss of mass or the detachment of the mass-balance weights, resulting in an unbalanced control surface, which could lead to flutter and loss of airplane control.

(f) Compliance

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

(g) Retained Compliance Times for the Actions Required by Paragraph (h) of This AD, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2020–12–08, with no changes. For airplanes with a serial number listed in Embraer Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019 (Embraer SB505–55–A004R5): At the applicable compliance time specified in paragraph (g)(1), (2), or (3) of this AD, accomplish the actions required by paragraph (h) of this AD.

(1) For airplanes with a serial number listed in Group 1 of Embraer SB505–55–A004R5: Within 3 calendar days or 5 hours time-in-service (TIS), whichever occurs first, after July 1, 2020 (the effective date of AD 2020–12–08).

(2) For airplanes with a serial number listed in Group 3 of Embraer SB505–55–A004R5: Within 30 calendar days or 50 hours TIS, whichever occurs first, after July 1, 2020 (the effective date of AD 2020–12–08).

(3) For airplanes with a serial number listed in Group 2 of Embraer SB505–55–A004R5: Within 60 calendar days or 100 hours TIS, whichever occurs first, after July 1, 2020 (the effective date of AD 2020–12–08).

(h) Retained Required Actions, Without Reporting Requirement

This paragraph restates the requirements of paragraph (h) of AD 2020–12–08, without the requirement to report information to Embraer. For airplanes with a serial number listed in Embraer SB505–55–A004R5, at the applicable time specified in paragraph (g) of this AD: Do the inspections identified in paragraphs (h)(1) through (6) of this AD and, before further flight, install or replace the mass-balance, as applicable, and replace the attachment parts, in accordance with Parts I through VI and Part VIII, as applicable, of the Accomplishment Instructions of Embraer SB505–55–A004R5; except, where the service information tells you to submit information to Embraer, this AD does not require that action.

(1) Do an inspection of the elevator horn mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance.

(2) Do an inspection of the elevator internal mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance. You must remove and weigh the mass-balance weight even if there is no sign of corrosion or material fragmentation.

(3) Do an inspection of the elevator adjustable mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance.

(4) Do an inspection of the aileron mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance. You must remove and weigh the mass-balance weight even if there is no sign of corrosion or material fragmentation.

(5) Do an inspection of the rudder adjustable mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance.

(6) Do an inspection of the rudder internal mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance. You must remove and weigh the mass-balance weight even if there is no sign of corrosion or material fragmentation.

(i) Retained Revision of the Airworthiness Limitations Section, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–12–08, with no changes. Within 10 days after July 1, 2020 (the effective date of AD 2020–12–08), revise the airworthiness limitations section (ALS) of the existing maintenance manual or instructions for continued airworthiness to add the information in table 1 to paragraph (i) of this AD and the initial compliance time information in table 2 to paragraph (i) of this AD.

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Table 1 to paragraph (i) – *New Airworthiness Limitations*

Maintenance Requirement	Inspection Type	Inspection Title	Interval
55-20-04-001	General visual inspection (GVI)	Internal GVI of Elevator Mass-Balance Weight and Attachments	60 Months (MO)
55-20-04-002	Special detailed inspection (SDI)	SDI (Borescope Method) of Elevator Mass-Balance Weight and Attachments	60 MO
55-40-04-002	GVI	Internal GVI of Rudder Adjustable Mass-Balance Weight and Attachments	60 MO
55-40-04-003	SDI	SDI (Borescope Method) of Rudder Fixed Mass-Balance Weight and Attachments	60 MO
57-60-00-001	Detailed visual inspection (DET)	External DET of the Aileron	60 MO

Table 2 to paragraph (i) – *Initial compliance time for the inspections listed in Table 1 to paragraph (i) of this AD*

Age of airplane on July 1, 2020 (the effective date of AD 2020-12-08)	Initial Compliance Time for Each Inspection
Less than 48 MO since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness	Within 60 MO after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness

Age of airplane on July 1, 2020 (the effective date of AD 2020-12-08)	Initial Compliance Time for Each Inspection
Between 48 MO and 72 MO since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness	Within 12 MO after July 1, 2020 (the effective date of AD 2020-12-08), or within 72 MO after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, whichever occurs first
More than 72 MO since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness	Within 30 days after July 1, 2020 (the effective date of AD 2020-12-08)

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(j) Retained Provision: No Alternative Actions or Intervals, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2020–12–08, with no changes. After the ALS has been revised as required by paragraph (i) of this AD, no alternative inspection intervals may be approved, except as provided in paragraph (p) of this AD.

(k) New Definition

For the purposes of this AD, ''since new'' is defined as since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness.

(l) New Elevator Mass-Balance Actions (Groups 1, 2, and 3)

At the applicable compliance time specified in paragraph (l)(1), (2), or (3) of this AD, clean, weigh, and, as applicable, install or replace the elevator mass-balances; or replace the elevator mass-balances; as applicable, in accordance with Part I of the Accomplishment Instructions in Embraer Service Bulletin SB505–55–0004, Revision 01, dated June 24, 2020 (Embraer SB505–55–0004R01). Where steps (1)(d), (2)(d), and (3)(e) of Part I of the Accomplishment Instructions in Embraer SB505–55–0004R01 reference ''criteria of the PART I,'' use the criteria in section 1.D. of Embraer SB505–55–0004R01.

(1) For airplanes with a serial number listed as Group 1 or Group 3 in paragraphs 1.A.(1)(a) and (c), respectively, of Embraer SB505–55–0004R01: Within 12 months after the effective date of this AD.

(2) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(1)(b) of Embraer SB505–55–0004R01, which are not included in the effectivity of Embraer SB505–55–A004R5 or Embraer Alert Service Bulletin SB505–55–A004, Revision 06, dated March 25, 2020 (Embraer SB505–55–A004R06): At the applicable compliance time specified in paragraph (l)(2)(i), (ii), (iii), (iv), (v), or (vi) of this AD.

(i) For airplanes with 12 or fewer months since new as of the effective date of this AD: Within 18 months after the effective date of this AD.

(ii) For airplanes with more than 12 months but 24 or fewer months since new as of the effective date of this AD: Within 12 months after the effective date of this AD.

(iii) For airplanes with more than 24 months but 36 or fewer months since new as of the effective date of this AD: Within 9 months after the effective date of this AD.

(iv) For airplanes with more than 36 months but 48 or fewer months since new as of the effective date of this AD: Within 7 months after the effective date of this AD.

(v) For airplanes with more than 48 months but 60 or fewer months since new as of the effective date of this AD: Within 6 months after the effective date of this AD.

(vi) For airplanes with more than 60 months since new as of the effective date of this AD: Within 5 months after the effective date of this AD.

(3) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(1)(b) of Embraer SB505–55–0004R01, which are included in the effectivity of Embraer SB505–55–A004R5 or Embraer SB505–55–A004R06: Before further flight.

(m) New Aileron Mass Balance Actions (Groups 1 and 2)

At the applicable compliance time specified in paragraph (m)(1), (2), or (3) of this AD, clean, weigh, and, as applicable, install or replace the aileron mass-balance in accordance with Part II of the Accomplishment Instructions in Embraer SB505–55–0004R01. Where steps (1)(c) and (2)(c) of Part II of the Accomplishment Instructions in Embraer SB505–55–0004R01 reference ''criteria of the PART II,'' use the criteria in section 1.D. of Embraer SB505–55–0004R01.

(1) For airplanes with a serial number listed as Group 1 in paragraph 1.A.(2)(a) of Embraer SB505–55–0004R01: Within 60 months after the effective date of this AD.

(2) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(2)(b) of Embraer SB505–55–0004R01, which are not included in the effectivity of Embraer SB505–55–A004R5 or Embraer SB505–55–A004R06: At the applicable compliance time specified in paragraph (m)(2)(i) or (ii) of this AD.

(i) For airplanes with 59 or fewer months since new as of the effective date of this AD: Within 60 months since new.

(ii) For airplanes with more than 59 months since new as of the effective date of this AD: Within 120 months since new.

(3) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(2)(b) of Embraer SB505–55–0004R01, which are included in the effectivity of Embraer SB505–55–A004R5 or Embraer SB505–55–A004R06: Before further flight.

(n) New Rudder Mass Balance Actions (Groups 1 and 2)

At the applicable compliance time specified in paragraph (n)(1), (2), or (3) of this AD, clean, weigh, and, as applicable, install or replace the rudder mass-balances in accordance with Part III of the Accomplishment Instructions in Embraer SB505–55–0004R01. Where steps (1)(c) and (2)(c) of Part III of the Accomplishment Instructions in Embraer SB505–55–0004R01 reference ''criteria of the PART III,'' use the criteria in section 1.D. of Embraer SB505–55–0004R01.

(1) For airplanes with a serial number listed as Group 1 in paragraph 1.A.(3)(a) of Embraer SB505–55–0004R01: At the applicable compliance time specified in paragraph (n)(1)(i), (ii), or (iii) of this AD.

(i) For airplanes with 59 or fewer months since new as of the effective date of this AD: Within 60 months since new.

(ii) For airplanes with more than 59 months but 119 or fewer months since new as of the effective date of this AD: Within 120 months since new.

(iii) For airplanes with more than 119 months since new as of the effective date of this AD: Within 6 months after the effective date of this AD.

(2) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(3)(b) of Embraer SB505–55–0004R01, which are not included in the effectivity of Embraer SB505–55–A004R5 or Embraer SB505–55–A004R06: At the applicable compliance time specified in paragraph (n)(2)(i) or (ii) of this AD.

(i) For airplanes with 59 or fewer months since new as of the effective date of this AD: Within 60 months since new.

(ii) For airplanes with more than 59 months since new as of the effective date of this AD: Within 120 months since new.

(3) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(3)(b) of Embraer SB505–55–0004R01, which are included in the effectivity of Embraer SB505–55–A004R5 or Embraer SB505–55–A004R06: Before further flight.

(o) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (h) of this AD, if you performed those actions before July 1, 2020 (the effective date of AD 2020–12–08) using the service information specified in paragraphs (o)(1)(i), (ii), or (iii) of this AD.

(i) Embraer Alert Service Bulletin SB505–55–A004, Revision 2, dated November 6, 2019.

(ii) Embraer Alert Service Bulletin SB505–55–A004, Revision 3, dated November 13, 2019.

(iii) Embraer Alert Service Bulletin SB505–55–A004, Revision 4, dated November 21, 2019.

(2) This paragraph provides credit for the actions required by paragraph (h) of this AD, if you performed those actions before the effective date of this AD using Embraer SB505–55–A004R06.

(3) This paragraph provides credit for the initial inspections required by table 2 to paragraph (i) of this AD, if you performed those actions before July 1, 2020 (the effective date of AD 2020–12–08) using the service information specified in paragraphs (o)(3)(i), (ii), or (iii) of this AD.

(i) Embraer Alert Service Bulletin SB505–55–A004, Revision 2, dated November 6, 2019.

(ii) Embraer Alert Service Bulletin SB505–55–A004, Revision 3, dated November 13, 2019.

(iii) Embraer Alert Service Bulletin SB505–55–A004, Revision 4, dated November 21, 2019.

(4) This paragraph provides credit for the initial inspections required by table 2 to paragraph (i) of this AD, if you performed those actions before the effective date of this AD using Embraer SB505–55–A004R5 or Embraer SB505–55–A004R06.

(5) This paragraph provides credit for the actions required by paragraphs (l), (m), and (n) of this AD, if you performed those actions before the effective date of this AD using Embraer Service Bulletin SB505–55–0004, dated March 25, 2020.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the General Aviation & Rotorcraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (q)(1) of this AD and email 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.

(3) AMOCs approved for AD 2020–12–08 are approved as AMOCs for the corresponding provisions of this AD.

(q) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

(2) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian AD 2020–09–01, dated September 8, 2020, for related information. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1073.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (r)(5) and (6) of this AD.

(r) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 13, 2022.

(i) Embraer Alert Service Bulletin SB505–55–A004, Revision 06, dated March 25, 2020.

(ii) Embraer Service Bulletin SB505–55–0004, Revision 01, dated June 24, 2020.

(4) The following service information was approved for IBR on July 1, 2020 (85 FR 36312, June 16, 2020).

(i) Embraer Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019.

(ii) [Reserved]

(5) For service information identified in this AD, contact Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, P.O. Box 36/2, São José dos Campos, 12227–901, Brazil; phone: +55 12 3927 1000; email: *phenom.reliability@embraer.com.br;* website: *https://www.embraer.com.br/en-US/Pages/home.aspx.*

(6) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on February 24, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–04918 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0152; Project Identifier MCAI–2021–00254–A; Amendment 39–21966; AD 2022–05–14]

RIN 2120–AA64

Airworthiness Directives; GROB Aircraft SE (Type Certificate Previously Held by GROB Aircraft AG) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all GROB Aircraft SE (type certificate previously held by GROB Aircraft AG) (GROB) Model G 115EG airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as in-flight detachment of a rudder actuator hinge bracket. This AD requires repairing the support structure at the attachment to the attachment bolts on certain flight control surfaces, inspecting the support structure at the attachment bolts of all flight control surfaces, and taking corrective actions if discrepancies are detected. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 24, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 24, 2022.

The FAA must receive comments on this AD by April 25, 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 service information identified in this final rule, contact GROB Aircraft SE, Lettenbachstrasse 9, Tussenhausen Mattsies, Germany, D–86874; phone: +49 (0) 8268 998 114; website: *https://grob-aircraft.com/en/contact.html.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0152.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0152; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 2200 South 216th Street, Des Moines, WA 98198; phone: (206) 231–3500; email: *fred.guerin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0152 and Project Identifier MCAI–2021–00254–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent Fred Guerin, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 2200 South 216th St. Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2021–0057–E, dated February 26, 2021 (referred to after this as ''the MCAI''), to address the unsafe condition on GROB Model G 115E and G 115EG airplanes. The MCAI states:

> An occurrence has been reported of in-flight detachment of a rudder actuator hinge bracket. Subsequent inspection revealed that the attaching bolts penetrated the supporting structure to such an extent that the structure was no longer capable to withstand the loads. Penetrating attaching bolts cannot easily be detected. The same bolts are also on all other control surface hinge brackets.
>
> This condition, if not detected and corrected, could lead to failure or detachment of a control surface, possibly resulting in loss of control of the aeroplane.
>
> To address this potential unsafe condition, Grob published the [service bulletin] SB providing inspection and repair instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the attachment of all flight control surfaces, and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires the reporting of inspection results.
>
> This [EASA] AD is considered an interim action and further AD action may follow.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0152.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GROB Aircraft Service Bulletin MSB1078–205/5, dated October 5, 2021. This service information specifies performing visual and x-ray inspections of the support structure at the attachment bolts of all flight control surfaces and taking corrective actions if discrepancies are detected. This service information also specifies repairing the support structure at the attachment bolts on certain flight control surfaces as terminating action for the inspection.

The FAA also reviewed the following repair instructions, which contain repair instructions for certain attachment point positions:

- GROB Aircraft Repair Instruction No. RI–1078–92/1, dated June 2, 2021 (rudder and vertical stabiliser hinge bracket attachment points);
- GROB Aircraft Repair Instruction No. RI–1078–93/1, dated June 2, 2021 (flaps hinge bracket attachment points);
- GROB Aircraft Repair Instruction No. RI–1078–94/1, dated June 2, 2021 (aileron hinge bracket attachment points);
- GROB Aircraft Repair Instruction No. RI–1078–95/1, dated June 2, 2021 (elevator and horizontal stabilizer hinge bracket attachment points); and
- GROB Aircraft Repair Instruction No. RI–1078–97/1, dated June 2, 2021 (aileron and flap bellcrank hinge bracket attachment points).

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA

is issuing this AD because it has determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD and the MCAI.''

Differences Between This AD and the MCAI

The MCAI applies to the Model G 115E airplane, and this AD does not because it does not have an FAA type certificate. The MCAI requires an inspection and repair if discrepancies are found. For bolts in some control positions, this AD requires a repair before further flight without doing the inspection. The MCAI requires using GROB Aircraft Service Bulletin MSB1078–205/1, dated February 26, 2021, while this AD requires using the revised service information issued after the MCAI. The MCAI requires reporting the results of the inspection to GROB Aircraft SE, but this AD does not.

Interim Action

The MCAI was issued as interim action as a one-time inspection to address an immediate safety of flight issue. If EASA takes additional AD action, the FAA will evaluate and consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because there are no airplanes currently on the U.S. registry and thus, it is unlikely that the FAA will receive any adverse comments or useful information about this AD from U.S. operators. Accordingly, notice and opportunity for prior public comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B).

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

Costs of Compliance

There are currently no affected airplanes on the U.S. registry. In the event an affected airplane becomes a U.S.-registered airplane, the following is an estimate of the costs to comply with this AD.

The FAA estimates that it would take 40 work-hours per airplane to comply with control surface repair and the inspection in this AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,500 per airplane.

Based on these figures, the FAA estimates the cost of this AD to be $4,900 per airplane.

In addition, the FAA estimates that repairing the support structure required when discrepancies are found during the required inspection would take 40 work-hours at an average labor rate of $85 per work-hour. Required parts would cost about $1,000 for a total cost of $4,400 per airplane.

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 Flexibility Act

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–05–14 GROB Aircraft SE (Type Certificate Previously held by GROB Aircraft AG): Amendment 39–21966; Docket No. FAA–2022–0152; Project Identifier MCAI–2021–00254–A.

(a) Effective Date

This airworthiness directive (AD) is effective March 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GROB Aircraft SE (type certificate previously held by GROB Aircraft AG) Model G 115EG airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2700, Flight Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as in-flight detachment of a rudder actuator hinge bracket. The FAA is issuing this AD to detect

attaching bolt penetration into the composite flight control surfaces, which, if not corrected, could lead to failure or detachment of a control surface and loss of airplane control.

(f) Compliance

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

(g) Inspection and Repair

Before further flight after the effective date of this AD, do the actions in paragraphs (g)(1) and (2) of this AD.

(1) For attachment bolts in control surface positions 3, 7, 12, 16, and 27, repair each bolt in accordance with paragraph 7, Repair/Instructions, of the following applicable service document, except you are not required to contact Grob:

(i) For the rudder and vertical stabilizer hinge bracket attachment points, GROB Aircraft Repair Instruction No. RI–1078–92/1, dated June 2, 2021.

(ii) For the flaps hinge bracket attachment points, GROB Aircraft Repair Instruction No. RI–1078–93/1, dated June 2, 2021.

(iii) For the aileron hinge bracket attachment points, GROB Aircraft Repair Instruction No. RI–1078–94/1, dated June 2, 2021.

(iv) For the elevator and horizontal stabilizer hinge bracket attachment points, GROB Aircraft Repair Instruction No. RI–1078–95/1, dated June 2, 2021.

(v) For the aileron and flap bellcrank hinge bracket attachment points, GROB Aircraft Repair Instruction No. RI–1078–97/1, dated June 2, 2021.

Note 1 to paragraph (g)(1): Control surface positions are shown on page 1 of the Appendix of GROB Aircraft Service Bulletin MSB1078–205/5, dated October 5, 2021.

(2) For attachment bolts in all other control surface positions, inspect each bolt for penetration into the supporting structure by following Part A, paragraphs 1.8.1 through 1.8.15, of the Accomplishment/Instructions in GROB Aircraft Service Bulletin MSB1078–205/5, dated October 5, 2021, except you are not required to contact GROB for repair approval. If a bolt moves on an attachment point or has penetrated a control surface, before further flight, repair the attachment point using the applicable repair instruction listed in paragraph (g)(1)(i) through (v) of this AD.

(h) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished provided that:

(1) Operation in visual meteorological conditions only.

(2) Takeoff and landing with maximum cross-wind of 10 kts.

(3) No flaps may be used during take-off, in flight, or landing.

(4) Spins are prohibited.

(5) Intentional side-slips are prohibited.

(6) Maximum airspeed: 125 KIAS.

(i) 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 (j)(1) of this AD and email 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.

(j) Related Information

(1) For more information about this AD, contact Fred Guerin, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 2200 South 216th Street, Des Moines, WA 98198; phone: (206) 231–3500; email: *fred.guerin@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) Emergency AD 2021–0057–E, dated February 26, 2021, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2022–0152.

(k) Material Incorporated by Reference

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

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

(i) GROB Aircraft Service Bulletin MSB1078–205/5, dated October 5, 2021.

(ii) GROB Aircraft Repair Instruction No. RI–1078–92/1, dated June 2, 2021.

(iii) GROB Aircraft Repair Instruction No. RI–1078–93/1, dated June 2, 2021.

(iv) GROB Aircraft Repair Instruction No. RI–1078–94/1, dated June 2, 2021.

(v) GROB Aircraft Repair Instruction No. RI–1078–95/1, dated June 2, 2021.

(vi) GROB Aircraft Repair Instruction No. RI–1078–97/1, dated June 2, 2021.

(3) For service information identified in this AD, contact GROB Aircraft SE, Lettenbachstrasse 9, Tussenhausen Mattsies, Germany, D–86874; phone: +49 (0) 8268 998 114; website: *https://grob-aircraft.com/en/contact.html.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on February 25, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–04914 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1005; Project Identifier MCAI–2020–00709–A; Amendment 39–21963; AD 2022–05–11]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Viking Air Limited (type certificate previously held by Bombardier Inc.) Model DHC–3 airplanes with a certain wing strut assembly installed. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as fatigue damage of the wing struts. This AD requires a bolt hole eddy current inspection of the lug plate holes, a visual and fluorescent dye penetrant inspection of the lug fittings, and a visual and eddy current surface scan inspection of the wing strut assemblies. This unsafe condition could lead to failure of the wing strut, which could result in an in-flight breakup of the wing. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 13, 2022.

ADDRESSES: For service information identified in this final rule, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust,

Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1005.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1005; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *deep.gaurav@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Viking Air Limited (formerly Bombardier Inc.) Model DHC–3 airplanes with a wing strut assembly part number (P/N) C3W100 (all dash numbers) installed. The NPRM published in the **Federal Register** on December 21, 2021 (86 FR 72198). The NPRM was prompted by MCAI originated by Transport Canada, which is the aviation authority for Canada. Transport Canada has issued AD CF–2020–20, dated May 27, 2020 (referred to after this as ''the MCAI''), to correct an unsafe condition on Viking Air Limited (formerly Bombardier Inc.) Model DHC–3 airplanes. The MCAI states:

A DHC–3 experienced an in-flight failure of a wing strut in October 2019. Inspection of the failed part determined that it had fractured and that the fracture was consistent with fatigue damage. The investigation of the occurrence is ongoing.

In 1969, it was determined from fatigue testing and analysis that part number (P/N) C3W100 wing strut assemblies on DHC–3 that were used for normal operations at a maximum weight of 8000 pounds should be removed from service before they have accumulated more than 20 000 hours air time. This information, including definitions of normal operations, was published in Service Bulletin 3/10 dated 26 August 1969. It was also published at the same time in Appendix 4 Part 6, Structural Component Recommended Service Life Limits, of the DHC–3 Maintenance Manual PSM 1–3–2.

It is Transport Canada Civil Aviation (TCCA) policy to mandate compliance with new or more restrictive airworthiness limitations (AWLs) by the issuance of an AD if the AWL is established after products that are affected by the AWL are already in service. To date, TCCA has not mandated compliance with the 20 000 hours air time life limit AWL that is applicable to P/N C3W100 wing strut assemblies. This AD includes a requirement to comply with the life limit.

Some DHC–3 aeroplanes have been modified to permit operations at maximum weights above 8000 pounds. For example, TCCA Supplemental Type Certificate (STC) SA95–32 increases the maximum operating weight to 8367 pounds. This STC includes a requirement to reduce the life limit that is applicable to P/N C3W100 wing strut assembly from 20 000 hours air time to 17 500 hours air time, adjusted for the amount of time that the wing strut assembly is used at the higher maximum operating weight. Because this reduced life limit has been in place since the initial issue of STC SA95–32 in 1995, TCCA considers compliance to be mandatory for all aeroplanes that have been modified in accordance with the STC.

In November 2019, Viking Air Ltd. (Viking) issued Alert Service Bulletin (ASB) V3/0011. The ASB provides instructions for a one-time inspection and follow-on corrective actions for all dash numbers of wing strut assembly P/N C3W100. Since that time, several operators have reported the results of the inspection to Viking. The information in the operators' reports suggests that other DHC–3 wing struts may be at risk of failure. The inspection of the wing struts on five aeroplanes revealed crack indications during non-destructive inspection of bolt holes, seized bolts, pitting corrosion and fretting on the face of lug plates, scratches and gouges in the bolt hole of a lug plate. Failure of a wing strut could result in a catastrophic in-flight breakup of the wing.

This [Transport Canada] AD mandates the accomplishment of ASB V3/0011 or alternative inspection instructions provided by Viking on wing struts that have accumulated more than 2500 hours air time as of the effective date of this AD. New or serviceable struts installed on aeroplanes after the effective date of this AD that accumulate more than 2500 hours air time after the effective date of this AD are not subject to this AD or to the ASB V3/0011 inspections.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1005.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking DHC–3 Otter Alert Service Bulletin V3/0011, Revision NC, dated November 26, 2019. The service information specifies procedures for a bolt hole eddy current inspection of the lug hole on the lug plate P/N C3W104, a visual and fluorescent dye penetrant inspection of the lug fitting P/Ns C3W102 and C3W103, and a visual and eddy current surface scan inspection of the wing strut assembly P/N C3W101.

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

Differences Between This AD and the MCAI

The MCAI allows an alternative inspection, obtained from the design approval holder, if completed within 5 months. This AD does not include this alternative; however, operators who choose this option may propose an alternative method of compliance in accordance with paragraph (h) of this AD.

Interim Action

The FAA considers this AD interim action. The inspection reports required by this AD will be used by Viking and Transport Canada to determine if there is a need for further action. If additional action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 39 airplanes of U.S. registry. The FAA also estimates that it will take about 32 work-hours per airplane to comply with the inspection and repair or replacement requirements of this AD. The reporting requirement will take about 1 work-hour. The average labor rate is $85 per work-hour. Required parts will cost about $31,415 per airplane.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $1,334,580 or $34,220 per airplane.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the

costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–05–11 Viking Air Limited (Type Certificate Previously Held by Bombardier Inc.): Amendment 39–21963; Docket No. FAA–2020–1005; Project Identifier MCAI–2020–00709–A.

(a) Effective Date

This airworthiness directive (AD) is effective April 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc.) Model DHC–3 airplanes, all serial numbers, certificated in any category, with a wing strut assembly part number (P/N) C3W100 (all dash numbers) installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 5700, Wing Structure.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as fatigue damage of the wing struts. The FAA is issuing this AD to prevent failure of a wing strut. The unsafe condition, if not addressed, could result in an in-flight breakup of the wing.

(f) Compliance

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

(g) Required Actions

(1) For airplanes that have not been modified with Supplemental Type Certificate (STC) SA00438NY: Before each wing strut assembly P/N C3W100 accumulates 20,000 hours total time-in-service (TIS) or within 30 days after the effective date of this AD, whichever occurs later, remove the wing strut assembly P/N C3W100 from service and replace with a new (zero hours TIS) part. Thereafter, remove each wing strut assembly P/N C3W100 from service and replace with a new (zero hours TIS) part before accumulating 20,000 hours total TIS.

(2) For airplanes with a wing strut assembly P/N C3W100 with more than 2,500 hours total TIS on the effective date of this AD, regardless of whether the airplane has been modified with STC SA00438NY: Within 30 days after the effective date of this AD, inspect the wing strut assembly and attachment hardware for cracks, corrosion, and damage, in accordance with the Accomplishment Instructions in Viking DHC–3 Otter Alert Service Bulletin No. V3/0011, Revision NC, dated November 26, 2019, except you are not required to contact Viking.

(3) For all affected airplanes: Within 30 days after completing the inspection required by paragraph (g)(2) of this AD or within 30 days after the effective date of this AD, whichever occurs later, report the results of the inspection to Viking using the inspection reply form in Viking DHC–3 Otter Alert Service Bulletin No. V3/0011, Revision NC, dated November 26, 2019.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *deep.gaurav@faa.gov*.

(2) Refer to Transport Canada AD CF–2020–20, dated May 27, 2020, for related information. You may examine the Transport Canada AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1005.

(j) Material Incorporated by Reference

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

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

(i) Viking DHC–3 Otter Alert Service Bulletin V3/0011, Revision NC, dated November 26, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on February 23, 2022.

Derek Morgan,

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

[FR Doc. 2022–04917 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 220303–0067]

RIN 0694–AI73

Further Imposition of Sanctions Against Russia With the Addition of Certain Entities to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In response to the Russian Federation's (Russia's) further invasion of Ukraine on February 24, 2022, the Department of Commerce is amending the Export Administration Regulations (EAR) by adding 91 new entities to the Entity List under the destinations of Belize, Estonia, Kazakhstan, Latvia, Malta, Russia, Singapore, Slovakia, Spain, and United Kingdom with this final rule. These 91 entities have been determined by the U.S. Government to be acting contrary to the foreign policy or national security interests of the United States.

DATES: This rule is effective March 3, 2022

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Russia Sanctions

In response to Russia's further invasion of Ukraine, the Bureau of Industry and Security (BIS) has imposed stringent and expansive sanctions on Russia under the EAR (15 CFR parts 730–774). Russia's invasion of Ukraine flagrantly violates international law, is contrary to U.S. national security and foreign policy interests, and undermines global order, peace, and security, and therefore necessitates the imposition of these sanctions.

Effective February 24, 2022, BIS imposed sanctions on Russia under the EAR as part of a final rule, *Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)* (''Russia Sanctions Rule'').[1] Among other stringent licensing requirements and review policies, the Russia Sanctions Rule implemented measures to limit the ability of Russian 'military end users' under the EAR to support Russia's military activities. Specifically, BIS moved forty-five Russian entities from the Military End-User (MEU) List in supplement no. 7 to part 744 of the EAR to the Entity List in supplement no. 4 to part 744. In addition, BIS added two new Russian entities to the Entity List for acquiring items in support of nuclear activities.

In addition, effective March 2, 2022, BIS imposed sanctions on Belarus under the EAR in a final rule, *Implementation of Sanctions Against Belarus* (''Belarus Sanctions Rule''). Among other stringent licensing requirements and review policies, the Belarus Sanctions Rule implemented measures to limit the ability of Belarus' 'military end users' under the EAR to support Belarus' or Russia's military activities. Specifically, BIS added two entities in Belarus to the Entity List in supplement no. 4 to part 744.

With this final rule, in response to Russia's destabilizing conduct in Ukraine, BIS implements additional restrictions related to Russia by adding 91 entities to the Entity List under the destinations of Belize, Estonia, Kazakhstan, Latvia, Malta, Russia, Singapore, Slovakia, Spain, and United Kingdom. Specific information on the licensing requirements imposed on these entities is detailed below. The entities listed below have been involved in, contributed to, or otherwise supported the Russian security services, military and defense sectors, and military and/or defense research and development efforts.

[1] 87 FR 12226 (March 3, 2022).

II. Entity List Decisions

Entity List

The Entity List identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Entity List Changes in This Rule

This final rule implements the decision of the ERC to add 91 entities under 96 entries to the Entity List on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The 96 entries added to the Entity List consist of 1 entry in Belize, 3 entries in Estonia, 1 entry in Kazakhstan, 1 entry in Latvia, 2 entries in Malta, 81 entries in Russia, 1 entry in Singapore, 1 entry in Slovakia, 2 entries

in Spain, and 3 entries in United Kingdom. Entities with addresses under multiple countries receive multiple entries on the Entity List, accounting for the difference between the number of entities and entries added by this rule.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these 91 entities to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. The ERC has determined that all 91 entities have been involved, are involved in, or pose a significant risk of becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and prior review is required, via the imposition of a license requirement for exports, reexports, or transfers (in-country), of all items subject to the EAR. Specifically, all of these entities have been involved in, contributed to, or otherwise supported the Russian security services, military and defense sectors, and military and/or defense research and development efforts.

For the 91 entities added to the Entity List in this final rule under § 744.11(b), BIS imposes a license requirement that applies to all items subject to the EAR. For 86 of the 91 entities, BIS will review license applications under a policy of denial. For five entities (Elara; JSC Element; Radioavtomatika; Russian Space Systems; and Scientific Research Institute NII Submikron), BIS will review license applications involving all items subject to the EAR under a policy of denial, except on a case-by-case basis for U.S. Government supported space programs. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the entities being added to the Entity List in this rule.

For the reasons described above, this final rule adds the following 91 entities under 96 entries to the Entity List and includes, where appropriate, aliases:

Belize

- Ecotherm-Cryo Limited.

Estonia

- ADIMIR OU;
- Eastline Technologies OU; *and*
- Valery Kosmachov.

Kazakhstan

- Serniya Engineering.

Latvia

- Ecotherm-Cryo Limited.

Malta

- Djeco Group LP; *and*
- Malberg Limited.

Russia

- Amur Shipbuilding Factory PJSC;
- AO Center of Shipbuilding and Ship Repairing JSC;
- AO Kronshtadt;
- Avant Space LLC;
- Baikal Electronics;
- Center for Technological Competencies in Radiophtonics;
- Central Research and Development Institute Tsiklon;
- Crocus Nano Electronics;
- Dalzavod Ship-Repair Center;
- Elara;
- Electronic Computing and Information Systems;
- ELPROM;
- Engineering Center Ltd.;
- Forss Technology Ltd.;
- Integral SPB;
- JSC Element;
- JSC Pella-Mash;
- JSC Shipyard Vympel;
- Kranark LLC;
- Lev Anatolyevich Yershov (Ershov);
- LLC Center;
- MCST Lebedev;
- Miass Machine-Building Factory;
- Microelectronic Research and Development Center Novosibirsk;
- MPI VOLNA;
- N.A. Dollezhal Order of Lenin Research and Design Institute of Power Engineering;
- Nerpa Shipyard;
- NM-Tekh;
- Novorossiysk Shipyard JSC;
- NPO Electronic Systems;
- NPP Istok;
- NTC Metrotek;
- OAO GosNIIkhimanalit;
- OAO Svetlovskoye Predpriyatiye Era;
- OJSC TSRY;
- OOO Elkomtekh (Elkomtex);
- OOO Planar
- OOO Sertal;
- Photon Pro LLC
- PJSC Zvezda;
- Production Association Strela;
- Radioavtomatika;
- Research Center Module;
- Robin Trade Limited;
- R.Ye. Alekseyev Central Design Bureau for Hydrofoil Ships;
- Rubin Sever Design Bureau;
- Russian Space Systems;
- Rybinsk Shipyard Engineering;
- Scientific Research Institute of Applied Chemistry;
- Scientific-Research Institute of Electronics;
- Scientific Research Institute of Hypersonic Systems;
- Scientific Research Institute NII Submikron;
- Sergey IONOV;
- Serniya Engineering;
- Severnaya Verf Shipbuilding Factory;
- Ship Maintenance Center Zvezdochka;
- State Governmental Scientific Testing Area of Aircraft Systems (GkNIPAS);
- State Machine Building Design Bureau Raduga Bereznya;
- State Scientific Center AO GNTs RF—FEI A.I. Leypunskiy Physico-Energy Institute;
- State Scientific Research Institute of Machine Building Bakhirev (GosNIImash);
- Tomsk Microwave and Photonic Integrated Circuits and Modules Collective Design Center;
- UAB Pella-Fjord;
- United Shipbuilding Corporation JSC ''35th Shipyard'';
- United Shipbuilding Corporation JSC ''Astrakhan Shipyard'';
- United Shipbuilding Corporation JSC ''Aysberg Central Design Bureau'';
- United Shipbuilding Corporation JSC ''Baltic Shipbuilding Factory'';
- United Shipbuilding Corporation JSC ''Krasnoye Sormovo Plant OJSC'';
- United Shipbuilding Corporation JSC ''SC ''Zvyozdochka'';
- United Shipbuilding Corporation ''Pribaltic Shipbuilding Factory Yantar'';
- United Shipbuilding Corporation ''Scientific Research Design Technological Bureau Onega'';
- United Shipbuilding Corporation ''Sredne-Nevsky Shipyard'';
- Ural Scientific Research Institute for Composite Materials;
- Urals Project Design Bureau Detal;
- Vega Pilot Plant;
- Vertikal LLC;
- Vladislav Vladimirovich Fedorenko;
- VTK Ltd;
- Yaroslavl Shipbuilding Factory;
- ZAO Elmiks-VS;
- ZAO Sparta;
- ZAO Svyaz Inzhiniring; *and*

Singapore

- Alexsong PTE LTD.

Slovakia

- Incoff Aerospace S.R.O.

Spain

- Invention Bridge SL; *and*
- Majory LLP.

United Kingdom

- Djeco Group LP;

- Majory LLP; *and*
- Photon Pro LLC.

Additional Note

BIS notes that this rule is meant to serve as a response to Russian aggression against Ukraine. This rule does include entities in several allied countries, including member of the European Union and North Atlantic Treaty Organization, but is not an action against the countries in which the entities are located or registered or the governments of those countries. This rule only serves as an action against those entities listed, which have assisted the Russian military, contrary to U.S. foreign and national security policy interests.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were enroute aboard a carrier to a port of export, reexport, or transfer (in-country), on March 3, 2022, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classification, and carries a burden estimate of 29.6 minutes for a manual or electronic submission for a total burden estimate of 31,835 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 15, 2021, 86 FR 52069 (September 17, 2021); Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under BELIZE by adding an entry in alphabetical order for ''Ecotherm-Cryo Limited'';

■ b. Under ESTONIA by adding, in alphabetical order, entries for ''Admir OU,'' ''Eastline Technologies OU,'' and ''Valery Kosmachov'';

■ c. Under KAZAKHSTAN by adding an entry in alphabetical order for ''Serniya Engineering'';

■ d. By adding a heading for LATVIA in alphabetical order and under the heading adding an entry for ''Ecotherm-Cryo Limited'';

■ e. Under MALTA by adding, in alphabetical order, entries for ''Djeco Group LP'' and ''Malberg Limited'';

■ f. Under RUSSIA by adding in alphabetical order entries for ''Amur Shipbuilding Factory PJSC,'' ''AO Center of Shipbuilding and Ship Repairing JSC,'' ''AO Kronshtadt,'' ''Avant-Space LLC,'' ''Baikal Electronics,'' ''Center for Technological Competencies in Radiophtonics,'' ''Central Research and Development Institute Tsiklon,'' ''Crocus Nano Electronics,'' ''Dalzavod Ship-Repair Center,'' ''Elara,'' ''Electronic Computing and Information Systems,'' ''ELPROM,'' ''Engineering Center Ltd.,'' ''Forss Technology Ltd.,'' ''Integral SPB,'' ''JSC Element,'' ''JSC Pella-Mash,'' ''JSC Shipyard Vympel,'' ''Kranark LLC,'' ''Lev Anatolyevich Yershov (Ershov),'' ''LLC Center,'' ''MCST Lebedev,'' ''Miass Machine-Building Factory,'' ''Microelectronic Research and Development Center Novosibirsk,'' ''MPI VOLNA,'' ''N.A. Dollezhal Order of Lenin Research and Design Institute of Power Engineering,'' ''Nerpa Shipyard,'' ''NM-Tekh,'' ''Novorossiysk Shipyard JSC,'' ''NPO Electronic Systems,'' ''NPP Istok,'' ''NTC Metrotek,'' ''OAO GosNIIkhimanalit,'' ''OAO Svetlovskoye Predpriyatiye Era,'' ''OJSC TSRY,'' ''OOO Elkomtekh (Elkomtex),'' ''OOO Planar,'' ''OOO Sertal,'' ''Photon Pro LLP,'' ''PJSC Zvezda,'' ''Production Association Strela,'' ''Radioavtomatika,'' ''Research Center Module,'' ''Robin Trade Limited,'' ''R.Ye. Alekseyev Central Design Bureau for Hydrofoil Ships,'' ''Rubin Sever Design Bureau,'' ''Russian Space Systems (RKS),'' ''Rybinsk Shipyard Engineering,'' ''Scientific Research Institute of Applied Chemistry,'' ''Scientific-Research Institute of Electronics (NIIET),'' ''Scientific Research Institute of Hypersonic Systems,'' ''Scientific Research Institute NII Submikron,'' ''Sergey IONOV,'' ''Serniya Engineering,'' ''Severnaya Verf Shipbuilding Factory,'' ''Ship Maintenance Center Zvezdochka,'' ''State Governmental Scientific Testing Area of Aircraft Systems (GkNIPAS),'' ''State Machine Building Design Bureau Raduga, Bereznyak,'' ''State Scientific Center AO GNTs RF—FEI A.I. Leypunskiy Physico-Energy Institute,'' ''State Scientific Research Institute of Machine Building Bakhirev

(GosNIImash),'' ''Tomsk Microwave and Photonic Integrated Circuits and Modules Collective Design Center,'' ''UAB Pella-Fjord ''United Shipbuilding Corporation JSC ''35th Shipyard'','' ''United Shipbuilding Corporation JSC ''Astrakhan Shipyard'','' ''United Shipbuilding Corporation JSC ''Aysberg Central Design Bureau'','' ''United Shipbuilding Corporation JSC ''Baltic Shipbuilding Factory'','' ''United Shipbuilding Corporation JSC ''Krasnoye Sormovo Plant OJSC'','' ''United Shipbuilding Corporation JSC ''SC ''Zvyozdochka'','' ''United Shipbuilding Corporation ''Pribaltic Shipbuilding Factory Yantar'','' ''United Shipbuilding Corporation ''Scientific Research Design Technological Bureau Onega'','' ''United Shipbuilding Corporation ''Sredne-Nevsky Shipyard'', ''Ural Scientific Research Institute for Composite Materials,'' ''Urals Project Design Bureau Detal,'' ''Vega Pilot Plant,'' ''Vertikal LLC,'' ''Vladislav Vladimirovich Fedorenko,'' ''VTK Ltd,'' ''Yaroslavl Shipbuilding Factory,'' ''ZAO Elmiks-VS,'' ''ZAO Sparta,'' and ''ZAO Svyaz Inzhiniring''; and

■ g. Under SINGAPORE by adding an entry in alphabetical order for ''Alexsong PTE LTD'';

■ h. By adding a heading for SLOVAKIA in alphabetical order and under the heading adding an entry for ''Incoff Aerospace S.R.O.'';

■ i. By adding a heading for SPAIN in alphabetical order and under the heading adding, in alphabetical order, entries for ''Invention Bridge SL'' and ''Majory LLP''; and

■ j. Under UNITED KINGDOM by adding in alphabetical order entries for ''Djeco Group LP,'' ''Majory LLP,'' and ''Photon Pro LLP''.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
BELIZE	Ecotherm-Cryo Limited, 1½ Miles Northern Highway, Belize City, Belize. (See alternate address under Latvia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
*	* * *	*	* *	*
ESTONIA	Adimir OU, Akadeemia Tee 21E, 12618 Tallinn, Estonia; *and* Peterburi Tee 47–210, 11415 Tallinn, Estonia; *and* Vabaohukooli tee 76–A9 Tallinn, 12015 Estonia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Eastline Technologies OU, Akadeemia Tee 21E, 12618 Tallinn, Estonia; *and* Peterburi Tee 47–210, 11415 Tallinn, Estonia; *and* Vabaohukooli tee 76–A9 Tallinn, 12015 Estonia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Valery Kosmachov Akadeemia Tee 21E, 12618 Tallinn, Estonia; *and* Peterburi Tee 47–210, 11415 Tallinn, Estonia; *and* Vabaohukooli tee 76–A9 Tallinn, 12015 Estonia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
*	* * *	*	* *	*
KAZAKHSTAN	* *	*	* *	*
	Serniya Engineering, a.k.a., the following one alias: —Sernia Engineering. 164 Islam Karimov Street, Offic 311, Almaty, 050007, Kazakhstan. (See alternate address under Russia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
LATVIA	Ecotherm-Cryo Limited, 31B Riga, Latvia 1004. (See alternate address under Belize).	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
*	* * *	*	* *	*
MALTA	Djeco Group LP, a.k.a., the following one alias: —Djeco Group Holding LTD. Phoenix Business Centre, The Penthouse Old Railway Track, Santa Venera, Malta. (See alternate address under United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Malberg Limited, a.k.a., the following one alias: —Malberg LTD.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.

Country	Entity	License requirement	License review policy	Federal Register citation
	C1, Depiro Point, Depiro Street, Sliema, SLM 2033 Malta; *and* Forrest Street St Julians STJ 2033MT–X, X STJ 20133 Malta; *and* Phoenix Business Centre, The Penthouse, Old Railway Track, Santa Venera, Malta; *and* 48 Triq Stella Maris Sliema Slm 1765 Mt, Malta.			
	* *	*	* *	*
*	* * *	*	* *	*
RUSSIA	* *	*	* *	*
	Amur Shipbuilding Factory PJSC, a.k.a., the following two aliases: —PAO Amurskiy Sudostroitelnyy Zavod; *and* —PJSC ASZ. 1 Alleya Truda Street, Komsomolsk-na-Amure, Khabarovskiy Krai, Russia, 681000.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	AO Center of Shipbuilding and Ship Repairing JSC, a.k.a., the following one alias: —AO Tsentr Tekhnologii Sudostroyeniya i Sudoremonta. 7 Promyshlennaya Street, St. Petersburg, Russia, 198095.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	AO Kronshtadt, a.k.a., the following four aliases: —Kronshtadt Group; —Kronshtadt; —Kronde Group; *and* —ZAO Kronshtadt. 18 Stromynka Street, Moscow, Russia, 107076; *and* In. 3-Ya V.O., D. 62 litera A Pom 162, St. Petersburg, Russia, 199178; *and* 54 Maly Prospekt Vasilyevskogo Ostrova, Building 4P, St. Petersburg, Russia, 199178.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Avant-Space LLC, a.k.a., the following four aliases: —AVANT–SPEIS; —Avant Space Systems; —Avant Space Propulsion Systems; *and* —OOO Avant-Spejs. 4/7 Lugovaya Street, Skolkovo Innovation Center, Moscow, Russia, 143026; *and* 42 Bolshoy Bulvar, Skolkovo, Moscow, Russia, 143026; *and* 12 Presnenskaya Embankment, Moscow, Russia, 123112.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Baikal Electronics, Building B2, Territory of 26 km of the highway ''Baltia,'' BC ''Riga Land,'' Krasnogorsk District, Moscow, Russia, 143421.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Center for Technological Competencies in Radiophtonics, a.k.a., the following four aliases: —JCS CheAZ; —TsTK; —TsTK CheAZ; *and* —Cheboksary Electrical Equipment Plant. 10 8th of March, Building 1, Moscow, Russia, 127083.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Central Research and Development Institute Tsiklon, a.k.a., the following four aliases: —Cyclone TsNII; —CRI Cyclone; —Central Research Institute Cyclone JSC; *and* —Intercyclone LLC. 77 Shelkovskoe Highway, Moscow, Russia, 107207.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Crocus Nano Electronics, 42 Volgoradski Avenue, Fifth Floor, Moscow, Russia, 109316.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Dalzavod Ship-Repair Center, a.k.a., the following two aliases: —OAO Tsentr Sudoremonta Dalzavod; *and* —JSC CSD. 2 Dalzavodskaya Street, Vladivostok, Russia, 690001.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Elara, a.k.a., the following one alias: —Joint Stock Company Scientific and Production Complex Elara named after G.A. Illienko. 40 Moskovsky Avenue, Chuvash Republic, 428017; *and* 7 Obraztsova Street, Moscow, Russia, 428020.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial; Case-by-case basis for U.S. Government supported space programs.	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Electronic Computing and Information Systems (ELVIS), a.k.a. the following two aliases: —Joint Stock Company Research and Development Center ELVEES; *and* —Scientific Production Center Elvis. Thoroughfare No. 4922, House 4, Building 2, Zelenograd, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	ELPROM, Marshala Govorova Str. 40, Lit. A, Office 34, St. Petersburg 198095, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Engineering Center Ltd., a.k.a., the following three aliases: —Certified Engineering Center, Ltd.; —LCEC; *and* —EC. 4 Gabrichevsky Street, Room 124, Moscow, Russia, 125367; *and* 43 Volokolamskoe Highway, Room 121, Moscow, Russia, 125424.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Forss Technology Ltd., a.k.a., the following four aliases: —FT Ltd; —Forss Marine; —OOO Smart Marin; *and* —OOO Forss Teknologii. 51 Magnitogorskaya Street, D. Letter E Office 210, Saint Petersburg, Russia, 195027; *and* 44 Bronnitskaya Street, Letter A, Room 1H, Saint Petersburg, Russia, 190013.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Integral SPB, 21 Irinovski Avenue, Building 1, Saint Petersburg, Russia, 195279.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	JSC Element, 12 Presnenskaya Embankment, Office 2024, Moscow, Russia, 123112.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial; Case-by-case basis for U.S. Government supported space programs.	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	JSC Pella-Mash, 4 Tsentralnaya Street, Kirovski District, Otradnoe, Leningradskaya Oblast, Russia, 187330.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	JSC Shipyard Vympel, a.k.a., the following two aliases: —Aktsionernoe Obshchestvo ''Sudostroitelny Zavod ''Vympel''; *and* —Sudostroitelny Zavod Vympel, Aktsionernoe Obshchestvo. 4 Novaya Street, Rybinsk, Rybinski District, Yaroslavskaya, Russia, 152912.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Kranark LLC, 14 Professora Kachalova Street, Letter A, Saint Petersburg, Russia, 192019.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Lev Anatolyevich Yershov (Ershov), Ul. Tsvetochnaya, d.25, k.3, St. Petersburg, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	LLC Center, 21 Yablochkova Street, Building 3, Floor 3, Premise VIII, Room 1L, Moscow, Russia, 127322.	For all items subject to the EAR. (See § 744.11) of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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Country	Entity	License requirement	License review policy	Federal Register citation
	MCST Lebedev, a.k.a., the following three aliases: —Moscow Center of SPARC Technologies; —AO MTSST; *and* —ZAO Elbrus-MCST. 1 Nagatinskaya Street, Moscow, 117105, Russia; *and* 51 Leninski Prospekt, Moscow, 119049, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Miass Machine-Building Factory, a.k.a., the following two aliases: —AO Miasskiy mashinostroitelnyy zavod; *and* —JSC MMZ. 1 Turgoyakskoye Highway, Miass, Chelyabinksaya Oblast, Russia, 456300.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Microelectronic Research and Development Center Novosibirsk, a.k.a. the following two aliases: —KTIPM; *and* —IFP KTIPM SO RAN. 8 Nikolayeva Street, Novosibirsk, Russia,630090; *and* 2/1 Akademika Lavrentyeva Avenue, Novosibirsk, Russia, 630090.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	MPI VOLNA, a.k.a., the following two aliases: —Mashpriborintorg-Volna; *and* —Mashpriborintorg Wave. 4A Plekhanova Street, Unit XII, Floor 2, Moscow, Russia, 111123; *and* 29 Entuziastov Highway, Balashikha, Moskovskaya Oblast, Russia, 143907.	For all items subject to the EAR. (See § 744.11of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	N.A. Dollezhal Order of Lenin Research and Design Institute of Power Engineering, a.k.a., the following two aliases: —JSC Order of Lenin Research and Design Institute of Energy Engineering named after N. A. Dollezhal; *and* —JSC NIKIET. 2/8 Krasnosel'skaya Street, Moscow, Russia, 107140.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Nerpa Shipyard, a.k.a., the following one alias: —SRZ Nerpa. Snezhnogorsk, Murmansk Region, Russia, 184682.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	NM-Tekh, 4A Solnechnaya, House 6, Floor 1, Apartment XII, Office 4, Zelenograd, Moscow Oblast, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Novorossiysk Shipyard JSC, a.k.a., the following two aliases: —OAO Novosrossiyskiy sudoremontnyy zavod; *and* —JSC NSRZ. Sukhumskoye Highway, Novorossiysk, Krasnodarskiy Krai, Russia, 353902.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	NPO Electronic Systems, a.k.a., the following three aliases: —NPO Electric Systems; —NPO Elektronnye Sistemy; *and* —NPOS ES. 6 Kievskaya Street, St. Petersburg, Russia, 196084.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	NPP Istok, 19 Zavodskaya, Chernukha, Arzamasski District, Nizhegorodskaya Oblast, Russia, 607210; *and* 4A Okruzhnoi Thoroughfare, Fryazino, Moscovskaya Oblast, Russia, 141190; *and* 2A Vokzalnaya, Fryazino, Moskovaskaya Oblast, Russia, 141190.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	NTC Metrotek, a.k.a., the following four aliases: —Metrotek; —Metrotek Inzhiniring; —Nauchno-Tekhnicheskee Tsentr Metrotek; *and* —NTTS Metrotek. 21 Yablochkova Street, Moscow, Russia, 127322; *and* 27 Kolomyazhsky Avenue, 4th Floor, St. Petersburg, Russia, 197341.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	OAO GosNIIkhimanalit, a.k.a., the following one alias: —State Research Chemical-Analytical Institute. 17 Bumazhnaya Street, St. Petersburg, Russia, 190020.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	OAO Svetlovskoye Predpriyatiye Era, a.k.a., the following two aliases: —JSC Svetlovskoye Predpriyatiye Era; *and* —SP Era. 1 L. Chaikinoi St., Svetly, Kaliningradskaya obl., 238340, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	OJSC TSRY, a.k.a., the following one alias: —OJSC Tuapse Ship Repair Plant. 11 Maksima Gorkogo Street, Tuapsinski District, Tuapse, Krasnodarski Krai, Russia, 352800.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	OOO Elkomtekh (Elkomtex), Shkapina Street, 32/34 D, St. Petersburg, Russia 198095.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	OOO Planar, Office 1, Dom 76, Likhvintseva St., Izhevsk, Republic of Udmurt, Russia 426034; *and* 8th March Street, Dom 16, Izhevsk, Republic of Udmurt, Russia 426034; *and* Dom 19, Bazisnaya St., Izhevsk, Republic of Udmurt, Russia 426034.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	OOO Sertal, a.k.a., the following three aliases: —Sernia; —Serniya; *and* —Sertal LLC. 21 Yablochkova Street, Building 3, Floor 3, Apartment VIII, Room 11, Moscow, Russia, 27322.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Photon Pro LLP, a.k.a., the following one alias: —Photon Pro. 3 Lodygina Street, Saransk, Mordovia Republic, Russia, 430034. B443 (See alternative address under United Kingdom)	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	PJSC Zvezda, 123 Babushkina Street, St. Petersburg, Russia, 192012.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Production Association Strela, 26 Shevchenko Street, Orenburg, Russia, 460005.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Radioavtomatika, a.k.a., the following one alias: —Testprecision LLC. 33 Gagarina, Reutov, Moscow Oblast, Russia, 143966; *and* 1 Komsomolskaya, Podolsk, Moscow Oblast, Russia, 142100; *and* 5 B Maliy Avenue P.S., St. Petersburg, Russia, 194044; *and* 2A Severnaya, Vladimir, Vladimirskaya Oblast, Russia, 600007; *and* 11 Zolotorozhski Val, Moscow, Russia, 111033.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial; Case-by-case basis for U.S. Government supported space programs.	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Research Center Module, a.k.a., the following two aliases: —NTTs Science and Technology Research Center Module; *and* —CJSC STC Module.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.

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	3 8 Marta 4th Street, Moscow, Russia, 123557.			
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	Robin Trade Limited, a.k.a., the following one alias: —Robin Tried. 21 Yablochkova Street, Building 3, Room VII, Moscow, Russia, 127322.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	R.Ye. Alekseyev Central Design Bureau for Hydrofoil Ships, a.k.a., the following two aliases: —OAO Tsentralnoye Konstructorskoye byuro po sudam na podvodnqkh krylyakh imeni R.E. Alekseyeva; *and* —JSC Alexeev's Hydrofoil Design Bureau. 51 Svobody Street, Nizhnyy Novgorod, Russia, 603003; *and* 5 Alekseeva Street, Kuznetsovo Village, Chkalovskiy District, Nizhny Novgorod Oblast, Russia, 606549; *and* 29 Alpiyskiy Line, St. Petersburg, Russia, 192286.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Rubin Sever Design Bureau, a.k.a., the following three aliases: —Rubin Sever AO; —Konstruktorskoe Byuro Rubin-Sever, PAO; *and* —Aktsionernoe Obshchestvo "Konstruktorskoe Byuro "Rubin-Sever". 58 Arkhangelskoe Highway, Severodvinsk, Arkhangelskaya Oblast, Russia, 164500.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Russian Space Systems (RKS), 222 Sosnovaya, Tsiolkovski, Amurskaya Oblast, Russia, 676470; *and* 53G Aviamotornaya, Moscow, Russia, 111024; *and* 51 Dekabristov, Moscow, Russia, 127490.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial; Case-by-case basis for U.S. Government supported space programs.	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Rybinsk Shipyard Engineering, a.k.a., the following one alias: —ZAO Rybinskaya verf-inzhenering. 1A Sudostroitelnaya Street, Sudoverf Village, Rybinskiy Districy, Yaroslavskaya Oblast, Russia, 152978.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Scientific Research Institute of Applied Chemistry, a.k.a., the following two aliases: —Federal Research and Production Center Research Institute of Applied Chemistry; *and* —NIIPH. 3 Academician Silina Street, Sergiev Posad, Moscow Oblast, Russia, 141313.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Scientific-Research Institute of Electronics (NIIET), a.k.a., the following two aliases: —AO Scientific Research Institute of Electronics; *and* —AO Scientific Research. 119A Prospekt Leninski, Voronezh, Voronezhskaya Oblast, Russia, 394033; *and* 5 Starykh Bolshevikov, Voronezh, Voronezhskaya Oblast, Russia, 394033.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Scientific Research Institute of Hypersonic Systems, a.k.a., the following one alias: —Hypersonic System Research Institute of holding company Leninetz. 212 Mosckovsky Avenue, St. Petersburg, Russia, 196066.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Scientific Research Institute NII Submikron, 5 Street 2, Proskpekt Georgievski, Zelenograd, Moscow, Russia, 124498.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial; Case-by-case basis for U.S. Government supported space programs.	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Sergey IONOV, Marshala Govorova Str. 40, Lit. A, Office 34, St. Petersburg 198095, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Serniya Engineering, a.k.a., the following one alias: —Sernia Engineering.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.

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	57A Vavilova Street, Floor 2, Apartment 211, Room 211–3, Moscow, Russia, 117292; *and* 20 Ogorodnyy Driveway, Building 27, Floor 6, Office 8, Moscow, Russia, 127322; *and* 167B Rodionova Street, Nizhniy Novgorod, Russia; *and* 270 Ligovsky Avenue, Section B, Office 2201, Saint Petersburg, Russia, 196084; *and* 12 Sibirskiy Tract, Building 1A, Yekaterinburg, Russia. (See alternative address under Kazakhstan).			
	Severnaya Verf Shipbuilding Factory, a.k.a., the following one alias: —OJSC Shipbuilding Plant Severnaya Verf. 6 Korabelnaya Street, St. Petersburg, Russia, 198096.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Ship Maintenance Center Zvezdochka, a.k.a., the following three aliases: —Zvezdochka Ship Repair Center JSC; —Zvezdochka CS; *and* —FL 5 Suderemontny Zavod AO TSS Zvezdochka. 12 Mashinostroiteley Passage, Severodvinsk, Arkhangelsk Region, Russia, 164500.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	State Governmental Scientific Testing Area of Aircraft Systems (GkNIPAS), a.k.a., the following one alias: —Federal State Enterprise State Research and Testing Ground for Aviation Systems named after L.K. Safronov. 59 Lesnaya Street, 1st Microdistrict, Beloozersky, Voskresensk, Moscow Oblast, Russia, 140250.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	State Machine Building Design Bureau Raduga, Bereznyak, 2A Zhuckovskiy Street, Dubna, Moscow Oblast, Russia, 14980.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	State Scientific Center AO GNTs RF—FEI A.I. Leypunskiy Physico-Energy Institute, a.k.a., the following two aliases: —Leypunsky Institute of Physics and Power Engineering; *and* —IPPE. 1 Bondarenko Square, Obninsk, Kaluga Oblast, Russia, 249020.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	State Scientific Research Institute of Machine Building Bakhirev (GosNIImash), a.k.a., the following three aliases: —JSC Scientific Research Institute for Mechanical Engineering; —State Research Institute of Mechanical Engineering named after. V.V. Bakhireva; *and* —GosNIImash. 11A Sverdlova Thoroughfare, Dzerzhinsk, Russia, 606002.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Tomsk Microwave and Photonic Integrated Circuits and Modules Collective Design Center, a.k.a., the following one alias: —TUSUR-Electronica Research Company. 147 Krasnoarmeyskay Street, Office 101, Tomsk, Russia 634045; *and* 19 Gvardeyskoy Divizii Street, Office 64, 15, Tomsk, Russia, 634045.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	UAB Pella-Fjord, 4 Tsentralnaya Street, Kirovski District, Otradnoe, Leningradskaya Oblast, Russia, 187330.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	United Shipbuilding Corporation JSC ''35th Shipyard'', a.k.a., the following one alias: —Filial ''35 sudoremontny zavod'' Aktsionernogo obshchestva ''Tsentr sudoremonta'' ''Zvezdochka''. 100 Admirala Flota Lobova, Murmansk, Russia, 183017; *and* 100 A Street, Lobova, Russia, 183017.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	United Shipbuilding Corporation JSC ''Astrakhan Shipyard'', a.k.a., the following one alias: —Strahansky Shipyard. 37 Atarbekova, Astrakhan 414009, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.

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	United Shipbuilding Corporation JSC ''Aysberg Central Design Building'', a.k.a., the following one alias: —Iceberg Central Design Bureau. 36 Bolshoi Avenue V. I., St. Petersburg, Russia, 199034.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	United Shipbuilding Corporation JSC ''Baltic Shipbuilding Factory'', a.k.a., the following two aliases: —JSC Baltiski Zavod; *and* —Baltic Shipyard. 16 Kosaya Liniya Street, St. Petersburg, Russia, 199106.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	United Shipbuilding Corporation JSC ''Krasnoye Sormovo Plant OJSC'', a.k.a., the following one alias: —Zavod Krasnoe Sormovo, PAO. 1 Barrikad Street, Nizhni Novgorod, Nizhegorodskaya Oblast, Russia, 603003.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	United Shipbuilding Corporation JSC ''SC ''Zvyozdochka'', a.k.a., the following one alias: —Filial ''Astrakhanski Sudoremontny Zavod'' Aktsionernogo Obshchestva ''Tsentr sudoremonta ''Zvezdochka''. 37 Atarbekova, Astrakhan, Astrakhanskaya Oblast, Russia, 414009.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	United Shipbuilding Corporation ''Pribaltic Shipbuilding Factory Yantar'', a.k.a., the following two aliases: —Aktsionernoe Obshchestvo ''Pribaltiski Sudostroitelny Zavod ''Yantar''; *and* —Pribaltiski Sudostroitelny Zavod Yantar, Aktsionernoe Obshchestvo. 1 Guskova Place, Kaliningrad, Kaliningradskaya Oblast, Russia, 236005.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	United Shipbuilding Corporation ''Scientific Research Design Technological Bureau Onega'', a.k.a., the following two aliases: —Nauchno-issledovatelskoe proektno-teknnologicheskoe byuro Onega PJSC; *and* —SC NIPTB Onega. 12 Mashinostroitelei Thoroughfare, Severodvinsk, Arkhangelskaya Oblast, Russia,164509.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	United Shipbuilding Corporation ''Sredne-Nevsky Shipyard'', a.k.a., the following four aliases: —JSC SNSZ; —Aktcionernoe Obshestvo ''Sredne-Nevsky Sudostroyelny Plant''; —Middle Neva Shipbuilding Plant; *and* —Federal State Unitary Enterprise ''Sredne-Nevsky Shipbuilding Plant''. 10 Zavodskaya Street, Pontonny District, Saint Petersburg, Russia, 196643.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Ural Scientific Research Institute for Composite Materials, 57 Novozvyaginskaya Street, Perm, Russia, 614014.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Urals Project Design Bureau Detal, 8 Pironskaya Street, Kamensk-Uralskiy, Sverdlovsk Oblast, Russia, 623409.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Vega Pilot Plant, a.k.a., the following two aliases: —OZ Vega—Filial AO TSS Zvezdochka; *and* —Experimental Plant Vega. 73 Lenina Street, Borovski District, Borovsk, Kaluga Oblast, Russia, 249010.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Vertikal LLC, —148 Moskovski Avenue, Letter D, Apartment 8, Saint Petersburg, Russia, 196084.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	Vladislav Vladimirovich Fedorenko, Ul. Artillyeriskaya, d.1, lit.A, POM26N, St. Petersburg, Russia.	For all items subject to the EAR. (See § 744.11of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	VTK Ltd, a.k.a., the following three aliases: —Your Fuel Company; —BTK; *and* —OOO VTK.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	14 Professora Kachalova Street, Letter A, Saint Petersburg, Russia, 192019.			
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	Yaroslavl Shipbuilding Factory, a.k.a., the following one alias: —PAO Yaroslavskiy sudostroitelnyy zavod. 1 Korabelnaya Street, Yaroslavl, Russia, 150006.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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	ZAO Elmiks-VS, Ul. Artillyeriskaya, d.1, lit.A, POM26N, St. Petersburg, Russia 191014.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	ZAO Sparta, Ul. Mokhovaya, d.18, li.A, Kv.7N, St. Petersburg, Russia 191028.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	ZAO Svyaz Inzhiniring, a.k.a., the following one alias: —Svyaz Engineering. 6th Radialnaya Street, Office 9, Moscow, Russia, 115404.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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*	* * *	*	* *	*
SINGAPORE	* *	*	* *	*
	Alexsong PTE LTD, a.k.a., the following one entity: —Champion Way Pte Ltd. OG Albert Complex, Albert Street 60 #10–04, City-Beach Road, 189969 Singapore.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
SLOVAKIA	Incoff Aerospace S.R.O., a.k.a., the following one alias: —Incoff Group Polianky 3327/5 Bratislava—Mestska Cast Dubravka; Bratislavsky, 84101, Slovakia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
*	* * *	*	* *	*
SPAIN	Invention Bridge SL, C/Provenza 281–2–9, 08006, Barcelona, Spain.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	Majory LLP, Avinguda De Rhode 255, Roses (Girona), ES CT, 17480, Spain. (See alternate address under United Kingdom).	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
*	* * *	*	* *	*
UNITED KINGDOM	* *	*	* *	*
	Djeco Group LP, a.k.a., the following one alias: —Djeco Group Holding LTD. 38 Thistle Street, Edinburgh, EH2 1EN, Scotland, United Kingdom. (See alternate address under Malta).	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Majory LLP, 25 City Road Spaces, City Road, Epworth House, Office 320, London, United Kingdom EC1Y 1AA. (See alternate address under Spain)	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
	* *	*	* *	*
	Photon Pro LLP, a.k.a., the following one alias: —Photon Pro. 25 City Road Spaces, City Road, Epworth House, Office 320, London, United Kingdom ECIY 1AA. (See alternate address under Russia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	87 FR [INSERT FR PAGE NUMBER] 3/9/2022.
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*	* * *	*	* *	*

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Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–04925 Filed 3–3–22; 5:00 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 140, 141, 211, 213, 225, 226, 227, 243, 249

[223A2100DD/AAKC001030/ A0A501010.999900253G]

RIN 1076–AF70

Civil Penalties Inflation Adjustments; Annual Adjustments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule provides for annual adjustments to the level of civil monetary penalties contained in Bureau of Indian Affairs (Bureau) regulations to account for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) guidance.

DATES: This rule is effective on March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Steven Mullen, Federal Register Liaison, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 924–2650, *RACA@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (''the Act''). The Act requires Federal agencies to adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

The Office of Management and Budget (OMB) issued guidance for Federal agencies on calculating the catch-up adjustment. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M–16–06). Under the guidance, the Department identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI0–U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI–U.

The Bureau issued an interim final rule providing for calculated catch-up adjustments on June 30, 2016 (81 FR 42478) with an effective date of August 1, 2016, and requesting comments post-promulgation. The Bureau issued a final rule affirming the catch-up adjustments set forth in the interim final rule on December 2, 2016 (81 FR 86953). The Bureau then issued a final rule making the next scheduled annual inflation adjustment for 2017 on January 23, 2017 (82 FR 7649), for 2018 on February 6, 2018 (83 FR 5192), for 2019 on April 15, 2019 (84 FR 15098), for 2020 on February 19, 2020 (85 FR 9366), and for 2021 on January 28, 2021 (86 FR 7344).

II. Calculation of 2022 Annual Adjustments

OMB recently issued guidance to assist Federal agencies in implementing the annual adjustments required by the Act, which agencies must complete by January 15, 2022. *See* December 15, 2021, Memorandum for the Heads of Executive Departments and Agencies, from Shalanda D. Young, Acting Director, Office of Management and Budget, re: *Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M–21–10). The guidance states that the cost-of-living adjustment multiplier for 2022, based on the Consumer Price Index (CPI–U) for the month of October 2021, not seasonally adjusted, is 1.06222. (The annual inflation adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U. For 2022, OMB explains, October 2021 CPI–U (276.589))/October 2020 CPI–U (260.388)) = 1.06222.) The guidance instructs agencies to complete the 2022 annual adjustment by multiplying each applicable penalty by the multiplier, 1.06222, and rounding to the nearest dollar. Further, agencies should apply the multiplier to the most recent penalty amount that includes the initial catch-up adjustment required by the Act.

The annual adjustment applies to all civil monetary penalties with a dollar amount that are subject to the Act. This final rule adjusts the following civil monetary penalties contained in the Bureau's regulations for 2022 by multiplying 1.06222 (*i.e.,* the cost-of-living adjustment multiplier for 2022) by each penalty amount as updated by the adjustment made in the prior year (2021):

CFR citation	Description of penalty	Current penalty including catchup adjustment	Annual adjustment (multiplier)	Adjusted penalty for 2022
25 CFR § 140.3	Penalty for trading in Indian country without a license	$1,368	1.06222	$1,453

CFR citation	Description of penalty	Current penalty including catchup adjustment	Annual adjustment (multiplier)	Adjusted penalty for 2022
25 CFR § 141.50	Penalty for trading on Navajo, Hopi or Zuni reservations without a license.	1,368	1.06222	1,453
25 CFR § 211.55	Penalty for violation of leases of Tribal land for mineral development, violation of part 211, or failure to comply with a notice of noncompliance or cessation order.	1,645	1.06222	1,747
25 CFR § 213.37	Penalty for failure of lessee to comply with lease of restricted lands of members of the Five Civilized Tribes in Oklahoma for mining, operating regulations at part 213, or orders.	1,368	1.06222	1,453
25 CFR § 225.37	Penalty for violation of minerals agreement, regulations at part 225, other applicable laws or regulations, or failure to comply with a notice of noncompliance or cessation order.	1,741	1.06222	1,849
25 CFR § 226.42	Penalty for violation of lease of Osage reservation lands for oil and gas mining or regulations at part 226, or noncompliance with the Superintendent's order.	976	1.06222	1,037
25 CFR § 226.43(a)	Penalty per day for failure to obtain permission to start operations	97	1.06222	103
25 CFR § 226.43(b)	Penalty per day for failure to file records	97	1.06222	103
25 CFR § 226.43(c)	Penalty for each well and tank battery for failure to mark wells and tank batteries.	97	1.06222	103
25 CFR § 226.43(d)	Penalty each day after operations are commenced for failure to construct and maintain pits.	97	1.06222	103
25 CFR § 226.43(e)	Penalty for failure to comply with requirements regarding valve or other approved controlling device.	195	1.06222	207
25 CFR § 226.43(f)	Penalty for failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well.	390	1.06222	414
25 CFR § 226.43(g)	Penalty per day for failure to properly care for and dispose of deleterious fluids.	976	1.06222	1,037
25 CFR § 226.43(h)	Penalty per day for failure to file plugging and other required reports	97	1.06222	103
25 CFR § 227.24	Penalty for failure of lessee of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining to comply with lease provisions, operating regulations, regulations at part 227, or orders.	1,368	1.06222	1,453
25 CFR § 243.8	Penalty for non-Native transferees of live Alaskan reindeer who violates part 243, takes reindeer without a permit, or fails to abide by permit terms.	6,451	1.06222	6,852
25 CFR § 249.6(b)	Penalty for fishing in violation of regulations at part 249 (Off-Reservation Treaty Fishing).	1,368	1.06222	1,453

Consistent with the Act, the adjusted penalty levels for 2022 will take effect immediately upon the effective date of the adjustment. The adjusted penalty levels for 2022 will apply to penalties assessed after that date including, if consistent with agency policy, assessments associated with violations that occurred on or after November 2, 2015 (the date of the Act). The Act does not, however, change previously assessed penalties that the Bureau is collecting or has collected. Nor does the Act change an agency's existing statutory authorities to adjust penalties.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes adjustments for inflation.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) 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.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This 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.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

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

I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior 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's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required.

J. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. 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 a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i)). 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.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by no later than January 15, of each year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that ''notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest,'' the agency may issue a rule without providing notice and an opportunity for prior public comment. Under section 553(b), the Bureau finds that there is good cause to promulgate this rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, the Bureau is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish a final rule and to update the civil penalty amounts by applying a specified formula. The Bureau has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is impracticable and unnecessary.

Furthermore, the Bureau finds under section 553(d)(3) of the APA that good cause exists to make this final rule effective immediately upon publication in the **Federal Register**. In the Act, Congress expressly required Federal agencies to publish annual inflation adjustments to civil penalties in the **Federal Register** by January 15 of each year, notwithstanding section 553 of the APA. Under the statutory framework and OMB guidance, the new penalty levels take effect immediately upon the effective date of the adjustment. The statutory deadline does not allow time to delay this rule's effective date beyond publication. Moreover, an effective date after January 15 would delay application of the new penalty levels, contrary to Congress's intent.

List of Subjects

25 CFR Part 140

Business and industry, Indians, Penalties.

25 CFR Part 141

Business and industry, Credit, Indians—business and finance, Penalties.

25 CFR Part 211

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 213

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 225

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements, Surety bonds.

25 CFR Part 226

Indians—lands.

25 CFR Part 227

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 243

Indians, Livestock.

25 CFR Part 249

Fishing, Indians.

For the reasons given in the preamble, the Department of the Interior amends chapter 1 of title 25 Code of Federal Regulations as follows.

PART 140—LICENSED INDIAN TRADERS

■ 1. The authority citation for part 140 continues to read as follows:

Authority: Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544, 18 U.S.C. 437; 25 U.S.C. 2 and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 140.3 [Amended]

■ 2. In § 140.3, remove ''$1,368'' and add in its place ''$1,453''.

PART 141—BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

■ 3. The authority citation for part 141 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 141.50 [Amended]

■ 4. In § 141.50, remove ''$1,368'' and add in its place ''$1,453''.

PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

■ 5. The authority citation for part 211 continues to read as follows:

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 347); Act of August 1, 1956 (70 Stat. 744); 25 U.S.C. 396a-g; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 211.55 [Amended]

■ 6. In § 211.55, in paragraph (a), remove ''$1,645'' and add in its place ''$1,747''.

PART 213—LEASING OF RESTRICTED LANDS FOR MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

■ 7. The authority citation for part 213 continues to read as follows:

Authority: Sec. 2, 35 Stat. 312; sec. 18, 41 Stat. 426; sec. 1, 45 Stat. 495; sec. 1, 47 Stat. 777; 25 U.S.C. 356; and Sec. 701, Pub. L. 114–74, 129 Stat. 599. Interpret or apply secs. 3, 11, 35 Stat. 313, 316; sec. 8, 47 Stat. 779, unless otherwise noted.

§ 213.37 [Amended]

■ 8. In § 213.37, remove ''$1,368'' and add in its place ''$1,453''.

PART 225—OIL AND GAS, GEOTHERMAL AND SOLID MINERALS AGREEMENTS

■ 9. The authority citation for part 225 continues to read as follows:

Authority: 25 U.S.C. 2, 9, and 2101–2108; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 225.37 [Amended]

■ 10. In § 225.37, in paragraph (a), remove ''$1,741'' and add in its place ''$1,849''.

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

■ 11. The authority citation for part 226 continues to read as follows:

Authority: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 226.42 [Amended]

■ 12. In § 226.42, remove ''$976'' and add in its place ''$1,037''.

§ 226.43 [Amended]

■ 13. In § 226.43:
■ a. Remove ''$97'' and add in each place ''$103'' wherever it appears;
■ b. In paragraph (e), remove ''$195'' and add in its place ''$207'';
■ c. In paragraph (f), remove ''$390'' and add in its place ''$414''; and
■ d. In paragraph (g), remove ''$976'' and add in its place ''$1,037''.

PART 227—LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING

■ 14. The authority citation for part 227 continues to read as follows:

Authority: Sec. 1, 39 Stat. 519; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 227.24 [Amended]

■ 15. In § 227.24, remove ''$1,368'' and add in its place ''$1,453''.

PART 243—REINDEER IN ALASKA

■ 16. The authority citation for part 243 continues to read as follows:

Authority: Sec. 12, 50 Stat. 902; 25 U.S.C. 500K; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 243.8 [Amended]

■ 17. In § 243.8, in paragraph (a) introductory text, remove ''$6,451'' and add in its place ''$6,852''.

PART 249—OFF–RESERVATION TREATY FISHING

■ 18. The authority citation for part 249 continues to read as follows:

Authority: 25 U.S.C. 2, and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 249.6 [Amended]

■ 19. In § 249.6, in paragraph (b), remove ''$1,368'' and add in its place ''$1,453''.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–04989 Filed 3–8–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 5

[Docket No. TTB–2018–0007; T.D. TTB–176A; Ref: T.D. TTB–176]

RIN 1513–AB54

Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages; Correction

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision; correction.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently published a final rule amending certain of its regulations governing the labeling and advertising of distilled spirits and malt beverages. That final rule, which also reorganized the regulations, appeared in the **Federal Register** of February 9, 2022. This document corrects several minor, non-substantive errors in that final rule.

DATES: This final rule is effective March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher M. Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–2265.

SUPPLEMENTARY INFORMATION: The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently published a final rule amending certain of its regulations governing the labeling and advertising

of distilled spirits and malt beverages. That final rule, which also reorganized those regulations, published as T.D. TTB–176 in the **Federal Register** of February 9, 2022, at 87 FR 7526. The final rule contained several minor inadvertent, nonsubstantive errors in the preamble discussion of, and the regulatory text for, 27 CFR part 5, Labeling and Advertising of Distilled Spirits.

First, in the final rule's preamble, in the Derivation Table for part 5, subpart I, the entry for § 5.153 should read ''[reserved]'' instead of ''New.'' In the related notice of proposed rulemaking (see Notice No. 176, 83 FR 60562, November 26, 2018), TTB proposed a new section, which it decided not to finalize, as described in the final rule. Second, and related to that error, in the final rule's regulatory amendments, the table of contents for part 5 lists the section heading for § 5.153 as originally proposed (''Diluted spirits'') instead of listing that section as ''reserved'' as finalized in T.D. TTB–176. (The final rule correctly shows § 5.153 as ''[Reserved]'' in the regulatory text of part 5) Third, in § 5.203, which lists the authorized standards of fill for distilled spirits, two paragraphs were designated as paragraph (a)(1)(v)—one setting out a standard of fill of 750 mL and the other a standard of fill of 720 mL.

The described errors were inadvertent, and their correction does not alter the intended meaning of any regulatory section contained in the final rule.

Corrections

In the final rule document numbered FR Doc. 2022–00841 beginning on page 7526 in the **Federal Register** issue of Wednesday, February 9, 2022, make the following corrections:

In the **SUPPLEMENTARY INFORMATION** section:

■ 1. On page 7575, at the bottom of the second column, in the Derivation Table for 27 CFR part 5, subpart I, in the table column titled ''Are derived from current section:'', in the entry for § 5.153, the word ''New'' is corrected to read ''[reserved]''.

In the Regulatory Amendments section:

■ 2. On page 7579, in the third column, in the table of contents for 27 CFR part 5, subpart I, in the entry for § 5.153, the phrase ''Diluted spirits'' is corrected to read ''[Reserved]''.

■ 3. On page 7602, in the third column, in § 5.203, paragraph (a)(1) is corrected to read as follows:

§ 5.203 [Corrected]

(a) * * *

(1) *Containers other than cans.* For containers other than cans described in paragraph (a)(2) of this section—

(i) 1.8 Liters.
(ii) 1.75 Liters.
(iii) 1.00 Liter.
(iv) 900 mL.
(v) 750 mL.
(vi) 720 mL.
(vii) 700 mL.
(viii) 375 mL.
(ix) 200 mL.
(x) 100 mL.
(xi) 50 mL.

* * * * *

Signed: March 2, 2022.

Mary G. Ryan,

Administrator.

[FR Doc. 2022–04893 Filed 3–8–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0013; T.D. TTB–178; Ref: Notice No. 198]

RIN 1513–AC62

Expansion of the Clarksburg Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is expanding the approximately 64,640-acre ''Clarksburg'' viticultural area by approximately 27,945 acres. The Clarksburg viticultural area is located in Sacramento, Solano, and Yolo Counties, in California, and the expansion area is located in Sacramento and Solano Counties. The established Clarksburg viticultural area and the expansion area are not located within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective April 8, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to

petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same process to request changes to established AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to modify established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the area within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition To Expand the Clarksburg AVA

TTB received a petition from James Reamer of Reamer Farms vineyard, submitted on behalf of himself and other wine industry members, proposing to expand the established ''Clarksburg'' AVA. The Clarksburg AVA (27 CFR 9.95) was established by T.D. ATF–166, which published in the **Federal Register** on January 23, 1984 (49 FR 2758). The Clarksburg AVA covers approximately 64,640 acres in Sacramento, Solano, and Yolo Counties in California. The Clarksburg AVA and the proposed expansion area are not located within any other AVA. Although the established Clarksburg AVA does contain the established Merritt Island AVA (27 CFR 9.68), the proposed expansion area is not adjacent to the Merritt Island AVA and would not affect the boundaries of that AVA.

The proposed expansion area is adjacent to the southern portion of the established AVA and entirely encompasses Grand Island and Ryer Island, which together cover approximately 27,945 acres. The petitioner states that within the proposed expansion area there are 350 acres of grapevines on Grand Island and three vineyards on Ryer Island. According to the petition, the soils, climate, and topography of the proposed expansion area are similar to those of the established Clarksburg AVA.

T.D. ATF–166 describes the soils of the Clarksburg AVA as poorly drained clay and clay loam soils, but provides no additional information about the soils of the surrounding regions except to note that viticulture to the west of the AVA is made impossible due to the combination of soils and flooding, and that the soils to the south of the AVA contain poorly drained organic and mineral soils. However, the expansion petition provides more detailed information about the soils of the Clarksburg AVA and the surrounding regions. The expansion petition states that the lands within the Clarksburg AVA and the proposed expansion area fall into two groups: The alluvial fan–basin group and the flood plain–basin–blackswamp group. These landform groups influenced the development of the soils in the AVA. The alluvial fan–basin group lands are found mostly in the western portion of the Clarksburg AVA and include soils of the Lang, Laugenour, Maria, Merritt, Sycamore, Tyndall, and Valdez series, as well as Egbert, Omni, Sacramento, and Willows soils. The eastern portion of the Clarksburg AVA is characterized by flood plain–basin–blackswamp landforms. Soils commonly found in this region include the Columbia, Consumnes, Lang, Laugenour, Sailboat, and Valpac series, as well as Clear Lake, Dierssen, and Tinnin soils.

Soils of both landform groups share several characteristics, including low-to-moderate levels of organic material, poor to somewhat-poor drainage, and a combination of silt, clay, sand, and loam. Because of the poor drainage quality of the soils, a well-placed and maintained system of ditches and canals is necessary, as are tile drains in some locations. Ridges in the vine rows called berms also allow for better drainage and are common features in both the AVA and the proposed expansion area. Additionally, vineyard owners often use rootstocks with greater-than-average tolerances of wet soils in order to limit the risk of significant root dieback and root diseases.

The proposed expansion area contains both flood plain–basin–blackswamp landforms and alluvial fan–basin landforms. Grand Island, in the eastern portion of the proposed expansion area, consists mostly of flood plain–basin–blackswamp landforms. Soils found in both Grand Island and the Clarksburg AVA include the Consumnes, Egbert, Laugenour, and Sailboat series. Ryer Island, in the western portion of the proposed expansion area, contains alluvial fan–basin landforms. Soils of the Egbert, Sacramento, and Valdez series are found in both the Clarksburg AVA and Ryer Island.

By contrast, one of the alluvial fan–basin landform soils found in the proposed expansion area and the Clarksburg AVA are found in the regions to the east and south, outside of the established AVA and the proposed expansion area. These regions contain a type of marshland soil called Rindge mucky silt loam, which is not found in either the Clarksburg AVA or the proposed expansion area. Furthermore, the soils to the east and south contain greater concentrations of organic matter. To the west of the proposed expansion area and the Clarksburg AVA, the common soils include the Capay and Pescadero series, which are not found in either the proposed expansion area or the AVA.

T.D. ATF–166 included precipitation as a distinguishing feature of the Clarksburg AVA, stating that the AVA receives an average of 16 inches of rain annually. The regions to the north and east were described as having higher annual rainfall amounts, while the regions to the south and west have lower annual amounts. T.D. ATF–166 also briefly discussed temperature, noting that Sacramento, which is north of the Clarksburg AVA, is generally 8 to 10 degrees warmer than the AVA is in the summer. The proposed expansion petition includes information about the average annual rainfall amounts of the Clarksburg AVA and the surrounding regions, which suggest that the Clarksburg AVA receives less rainfall annually than the surrounding regions. However, the petition did not include annual average rainfall amounts from within the proposed expansion area for comparison.

The expansion petition did provide more detailed information on temperatures in the region than that included in T.D. ATF–166, including information on the growing season mean, maximum, and minimum temperatures from within the Clarksburg AVA and the proposed expansion area. The data suggests that the climate of the proposed expansion area is similar to that of the Clarksburg AVA.

T.D. ATF–166, which established the Clarksburg AVA, did not consider topography to be a distinguishing feature of the Clarksburg AVA, only noting that the ''lower terraces to the east'' of the AVA are prone to flooding.[1] However, the expansion petition includes topographic information that suggests the proposed expansion area is

[1] 48 FR 2759.

more topographically similar to the Clarksburg AVA than the surrounding regions outside the AVA. Within the proposed expansion area, elevations range from a lowest point of 10 feet below sea level to a highest point of 5 feet above sea level. Within the current boundaries of the Clarksburg AVA, elevations range from 10 feet below sea level to 10 feet above sea level. By comparison, elevations to the east and south of the proposed expansion area are generally lower than within the Clarksburg AVA and the proposed expansion area. The petition states that the generally lower elevations in the surrounding regions mean that the depths to water tables are appreciably shallower than within the AVA and the proposed expansion area. As a result, functional root zones are very shallow, and the potential for viticulture in the surrounding regions is feasible but limited. Elevations within the proposed expansion area and the Clarksburg AVA are similar to those of the region to the west, in the Yolo Bypass, but that region to the west was excluded from the AVA and the proposed expansion area due to the frequency of flooding.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 198 in the **Federal Register** on November 10, 2020 (85 FR 71722), proposing to expand the Clarksburg AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed expansion area. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed area, see Notice No. 198.

The comment period for Notice No. 198 closed January 11, 2021. In response to Notice No. 198, TTB received a total of two comments. One comment was from the Board of Directors of the Suisun Valley Vintners and Growers Association, which describes itself as the primary wine grape grower association in Solano County. The Board expressed support for the proposed expansion, noting that the Solano County portion of the proposed expansion area is ''completely consistent in primary attributes (saving for slight variances) of the existing Clarksburg AVA'' and should be allowed to use the ''Clarksburg'' appellation rather than the political appellation ''Solano County.'' Incorporating the proposed expansion area into the Clarksburg AVA would lead to ''a more complete understanding of the varied regions within Solano County.'' The second comment, from a wine industry member in Lodi, California, also expressed support for the proposed expansion.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 198, TTB finds that the evidence provided by the petitioner supports the expansion of the Clarksburg AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB modifies the boundaries of the AVA effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary modifications of the Clarksburg AVA in the regulatory text published at the end of this final rule.

Maps

The petitioners provided the required maps, and they are listed below in the regulatory text. The modified Clarksburg AVA boundaries may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels and Transition Period

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The expansion of the Clarksburg AVA boundary means that wines produced mainly from grapes grown in the expansion area may be labeled with ''Clarksburg'' as an appellation of origin. No other established AVAs are affected by this expansion.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.95 is amended by adding paragraph (b)(9), revising paragraphs (c)(4) and (5), redesignating paragraphs (c)(6) through (12) as paragraphs (c)(7) through (13), and adding new paragraph(c)(6) to read as follows:

§ 9.95 Clarksburg.

* * * * *

(b) * * *

(9) Rio Vista, Calif., 1978 (minor revision 1993).

(c) * * *

(4) Then south along Miner Slough to the point where it joins Cache Slough.

(5) Then south along Cache Slough to the point where it joins the Sacramento River.

(6) Then east, then generally northeasterly along the meandering Sacramento River to the point where it

meets the Delta Cross Channel at the Southern Pacific Railroad.

* * * * *

Signed: March 2, 2022.

Mary G. Ryan,

Administrator.

Approved: March 2, 2022.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–05001 Filed 3–8–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0009; T.D. TTB–177; Ref: Notice No. 194]

RIN 1513–AC59

Establishment of the San Luis Obispo Coast (SLO Coast) Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 408,505-acre ''San Luis Obispo Coast'' viticultural area in San Luis Obispo County, California. TTB is also recognizing the abbreviated ''SLO Coast'' as the name of the AVA. The viticultural area is located entirely within the existing Central Coast viticultural area and encompasses the established Edna Valley and Arroyo Grande Valley AVAs. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective April 8, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

San Luis Obispo Coast (SLO Coast) AVA Petition

TTB received a petition from the SLO Coast AVA Association, proposing to establish the ''San Luis Obispo Coast'' AVA. The petition also requested that TTB recognize ''SLO Coast'' as a name for the proposed AVA, as ''SLO'' is a frequently-used reference to the county's initials as well as its relaxed culture. For purposes of the remainder of this document, TTB will refer to the proposed AVA as ''SLO Coast.'' The proposed AVA is located in San Luis Obispo County, California, and lies entirely within the established Central Coast AVA (27 CFR 9.75). If established, the proposed AVA would also entirely encompass the established Edna Valley (27 CFR 9.35) and Arroyo Grande Valley (27 CFR 9.129) AVAs. Within the approximately 480,585-acre proposed AVA, there are over 50 wineries, as well as an estimated 78 commercial vineyards covering approximately 3,942 acres. The distinguishing features of the proposed SLO Coast AVA are its topography, climate, and soils.

The petition describes the proposed SLO Coast AVA as a region of coastal terraces, foothills, and small valleys along the Pacific Coast. The region is oriented to the west, allowing the region to experience marine fog and cool marine air. According to the petition, 97 percent of the proposed AVA is at or below 1,800 feet in elevation, which corresponds to the approximate limit of

the influence of the maritime climate. The maritime influence prevents temperatures from rising too high or dropping too low for optimal vineyard conditions.

The proposed SLO Coast AVA's proximity to the Pacific Ocean moderates its temperatures. The average growing degree day accumulation (GDDs) [1] for the proposed AVA from 1971–2000 was 2,493, which places the proposed AVA in Region I of the Winkler scale.[2] The minimum growing season temperature for 90 percent of the proposed AVA is between 47.5 and 52 degrees Fahrenheit (F), based on data from 1981–2015. Also based on data from 1981–2015, twenty-one percent of the proposed AVA has an average maximum growing season temperature of less than 70 degrees F, while another 68 percent of the proposed AVA has an average maximum growing season temperature between 70 and 78 degrees F. The petition also states that between 2003 and 2015, the proposed AVA experienced nighttime fog cover between 35 and 55 percent of all nights during the growing season.

According to the petition, the climate of the proposed AVA makes it suitable for growing early-to-mid-season grape varietals such as Chardonnay and Pinot Noir, which compromise 43 and 35 percent, respectively, of the planted vineyard acreage of the proposed AVA. The petition also states that mild average minimum growing season temperatures lead to a shorter period of vine dormancy in the proposed AVA. The lower average maximum growing season temperatures (compared to surrounding regions) reduce the risk of fruit desiccation and produce higher levels of malic acid in the grapes, which increases total acidities and lowers pH values in the resulting wines. The nighttime fog lengthens the growing season by preventing temperatures from dropping significantly at night.

The soils of the proposed SLO Coast AVA can be divided into four groups. The largest group, found in the north and central parts of the proposed AVA, is derived from the Franciscan Formation and is comprised of sandstone, shale, and metamorphosed sedimentary rocks. Examples of soil series in this group include Diablo, San Simeon, Shimmon, Conception, and Santa Lucia series. The second largest group consists of younger marine deposits and basin sediments from the Miocene and Pliocene periods. These soils are comprised of sandy loam and loams derived from marine deposits and include the Pismo, Briones, Tierrs, Gazos, Nacimiento, Linne, Balcom, and Sorrento soil series. These soils provide excellent drainage for vineyards, but may require irrigation during the growing season. The third group is derived from volcanic intrusion and represents a very small percentage of the soils within the proposed AVA. Most soils in this group are found on excessively steep slopes or rocky terrain that is unsuitable for viticulture. The final group is derived from wind deposits and comprises the sand dunes and low areas near the coast. These soils also cover a very small percent of the proposed AVA and are generally unsuitable for viticulture due to their excessive drainage and high sodium content.

West of the proposed AVA is the Pacific Ocean. North of the proposed AVA, elevations rise over 3,000 feet in the steep, rough terrain of the Los Padres National Forest. To the northeast of the proposed AVA, GDD accumulations are higher and the region is classified as a Region II on the Winkler scale. Soils in this region are characterized by rocky outcrops and shallow soils derived from sandstone and metamorphic rock, as well as soils derived from igneous and granitic rocks.

East of the proposed AVA is the eastern side of the Santa Lucia Range, which faces away from the Pacific Ocean and thus experience less marine influence than the proposed AVA. As a result, GDD accumulations are higher, falling within the Region II and III categories on the Winkler scale. Average minimum growing season temperatures are lower, and average maximum growing season temperatures are higher. Fog occurs less than 30 percent of all nights during the growing season. The soils to the east of the proposed AVA consist mainly of alluvial and terrace deposits.

To the south of the proposed AVA is the Santa Maria Valley, which has a much flatter topography. GDD accumulations are higher than within the proposed AVA, and the region is characterized as Region II on the Winkler scale. Because the region has a flatter topography than the proposed SLO Coast AVA, the Santa Maria Valley is more exposed to the marine air. As a result, the Santa Maria Valley has higher average minimum growing season temperatures and lower average maximum growing season temperatures. Fog occurs over 55 percent of all nights during the growing season within the region to the south of the proposed AVA. Soils to the south of the proposed SLO Coast AVA consist of deep, fertile, sandy soils derived from alluvial deposits that contain less clay than the majority of soils within the proposed AVA.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 194 in the **Federal Register** on October 1, 2020 (85 FR 61899), proposing to establish the SLO Coast AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 194.

In Notice No. 194, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed AVA's location within the central Coast AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the established AVA. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the established Central Coast AVA that the proposed AVA should no longer be part of the established AVA. Finally, TTB requested comments on whether the proposed AVA is sufficiently distinguished from the established Edna Valley and Arroyo Grande Valley AVAs that it would encompass, as well as if one or both of the established AVAs are so distinct from the proposed SLO Coast AVA that it should not be included within the proposed AVA. The comment period closed November 30, 2020.

In response to Notice No. 194, TTB received four comments. None of the comments opposed the establishment of the proposed SLO Coast AVA, but three of the comments expressed concerns or questions about the proposed AVA. Two comments inquired as to the economic

[1] According to the petition, GDDs for a particular region are calculated by adding the total mean daily temperatures above 50 degrees Fahrenheit (F) for the days from April 1 through October 31. The formula is based on the concept that most vine shoot growth occurs in temperatures over 50 degrees F.

[2] See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd. ed. 1974), pages 61–64. In the Winkler scale, the GDD regions are defined as follows: Region I = less than 2,500 GDDs; Region II = 2,501–3,000 GDDs; Region III = 3,001–3,500 GDDs; Region IV = 3,501–4,000 GDDs; Region V = greater than 4,000 GDDs.

impact of AVAs. One comment asked if there could ''potentially be a negative economic impact on wineries with similar features that are unable to use the SLO name.'' A second comment asked if ''AVA wines'' are ''more lucrative and better for the economy'' and notes ''it would be interesting to study the cost of wines from an AVA versus the cost of wines not from AVAs, but still in the same region.'' TTB notes that establishment of an AVA is not a guarantee of economic benefit. Any economic benefit derived from the use of an AVA name on a wine label is a result of the efforts of the proprietor and the acceptance of the consumers of the new AVA. Therefore, TTB is not able to accurately predict the economic benefits any given winery or vineyard may experience as a result of the establishment of an AVA, nor can TTB predict if wineries and vineyards in one AVA will experience greater economic success than wineries and vineyards outside of that AVA. However, any person may petition TTB to establish a new AVA. Alternatively, a person may petition TTB to expand the boundaries of an established AVA to include previously omitted vineyards if they believe the expansion area has the same distinguishing features and name usage as the established AVA.

The second comment also asked if any land in the proposed SLO Coast AVA is not currently within an AVA. TTB notes that all of the land within the proposed SLO Coast AVA is already within the established multi-county Central Coast AVA. Additionally, some of the land is within either the established Edna Valley or Arroyo Grande Valley AVAs.

Additionally, the second comment asked the purpose of overlapping AVAs. TTB notes that a certain set of distinguishing features characterizes any given established AVA. All lands within that AVA are assumed to share those features. However, TTB also recognizes that small variations in soil, climate, and/or topography may exist within any established AVA, particularly large, multi-county AVAs like the Central Coast AVA in which the proposed SLO Coast AVA is located. At the time an AVA was originally established, the available data may have made the region appear largely homogenous, but over time, new data may become available that highlights these small differences. Establishing new AVAs within established AVAs provides formal recognition for these small differences while still acknowledging the broader characteristics these new AVAs share with the established one. For example, the proposed SLO Coast AVA shares the primary climate characteristic of the Central Coast AVA, which is a marine-influenced climate that is distinguishable from the climate of regions farther inland. As a result, vineyards in the proposed SLO Coast AVA and vineyards in the remaining portion of the Central Coast AVA will still have growing conditions that are more similar to each other than they are to the growing conditions in the warmer, drier inland regions east of the Central Coast AVA. However, the proposed SLO Coast AVA, by virtue of its location along the westernmost portion of the Central Coast AVA, receives more marine influence than the more inland regions of the Central Coast AVA. Vineyards in this more coastal region therefore experience slightly different growing conditions than vineyards elsewhere in the Central Coast AVA. Establishing a smaller AVA within the larger AVA also provides vintners with more flexibility in how they may choose to market their wines.

The third comment specifically supported the proposed SLO Coast AVA. However, the comment also suggested that the overlap between the proposed SLO Coast AVA and the Central Coast, Edna Valley, and Arroyo Grande Valley AVAs may cause ''the potential for tax discrepancies.'' To avoid potential conflict, the comment suggested allowing vintners to vote on which AVA they wish to be located. The comment also recommended setting a timeline for businesses to adjust their business practices to being in a new AVA, noted suggestions for offsetting costs incurred when a winery switches from one AVA to another, and suggested forming a committee consisting of 2 to 3 members from each AVA to ''help lead the transition process'' from one AVA to another.

TTB notes that the establishment of an AVA simply allows vintners a new way to market their wines and does not involve the creation of new taxes. Wine industry members' Federal excise tax payments are not based on the number of AVAs within which they are located. Additionally, including the Edna Valley and Arroyo Grande Valley AVAs in an established SLO Coast AVA, and including the SLO Coast AVA within the Central Coast AVA, would not force any label holders to make any changes to their business practices or impose on them any additional business costs. The Central Coast, Edna Valley, and Arroyo Grande Valley AVAs' boundaries would remain unchanged, and label holders may continue using ''Central Coast,'' ''Edna Valley,'' or ''Arroyo Grande Valley'' as appellations of origin on their wines. However, they would also have the option of using ''San Luis Obispo Coast'' or ''SLO Coast'' as an appellation of origin.

In addition, because AVAs are established by Federal regulations, TTB publishes a notice of proposed rulemaking to inform potentially affected persons of the proposed AVA, similar to how other Federal agencies make known proposed changes to their regulations. The decision to establish the AVA or withdraw the proposal is based on the information included in the AVA petition and any additional relevant information that may be provided during the comment period. In this case, label holders had over a year to prepare for the potential creation of this AVA, as on October 1, 2020 TTB published an NPRM proposing the establishment of the ''San Luis Obispo Coast'' or ''SLO Coast'' AVA. Further, affected label holders had until November 30, 2020 to submit comments on the proposed AVA.

TTB also notes that the SLO Coast AVA Association already exists to promote the region and may choose to work with vintners and wineries to promote the region. However, TTB does not have the authority to order such cooperation or to establish any association or advisory group to promote one or more AVAs.

A fourth comment supports establishment of the ''San Luis Obispo Coast'' or ''SLO Coast'' AVA. This comment notes distinguishing features within the proposed AVA's boundaries are different from areas outside these boundaries, and that establishing this AVA increases understanding of the diversity within San Luis Obispo County and the Central Coast AVA.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 194, TTB finds that the evidence provided by the petitioner supports the establishment of the San Luis Obispo Coast (SLO Coast) AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''San Luis Obispo Coast'' AVA, also known as the ''SLO Coast' AVA, in San Luis Obispo County, California, effective 30 days from the publication date of this document.

TTB has also determined that the SLO Coast AVA will remain part of the established Central Coast AVA. As discussed in Notice No. 194, the SLO Coast AVA shares the same marine-influenced climate as the Central Coast AVA. However, due to its smaller size

and more coastal location, the SLO Coast AVA experiences more marine influence than the more inland portions of the Central Coast AVA.

Furthermore, TTB has determined that the Edna Valley and Arroyo Grande AVAs will be within the SLO Coast AVA. As discussed in Notice No. 194, the Edna Valley and Arroyo Grande Valley AVA share the marine-influenced climate and clay and loam soils as the SLO Coast AVA. However, the Edna Valley AVA has some unique characteristics, such as a narrower range of elevations than the SLO Coast AVA. The climate of the Edna Valley AVA is also mostly Region II on the Winkler scale with pockets of Region I climate, whereas the SLO Coast AVA is primarily Region I with pockets of Region II climate. The Arroyo Grande Valley AVA also has some characteristics that make it unique. For example, the Arroyo Grande is in a sheltered location within the SLO Coast AVA, which means that it received less direct marine influence that other more open portions of the SLO Coast AVA.

Boundary Description

See the narrative description of the boundary of the SLO Coast AVA in the regulatory text published at the end of this final rule.

Maps

The petitioners provided the required maps, and they are listed below in the regulatory text. The SLO Coast AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the San Luis Obispo Coast AVA, its name, ''San Luis Obispo Coast,'' as well as the abbreviated ''SLO Coast,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). TTB is also designating ''San Luis Obispo Coast'' and ''SLO Coast'' as terms of viticultural significance. The text of the regulations clarifies this point. Consequently, wine bottlers using the names ''San Luis Obispo Coast'' or ''SLO Coast'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the SLO Coast AVA will not affect the existing Central Coast, Edna Valley, or Arroyo Grande Valley AVAs, and any bottlers using ''Central Coast,'' ''Edna Valley,'' or ''Arroyo Grande Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within those AVAs will not be affected by the establishment of this new AVA. The establishment of the SLO Coast AVA will allow vintners to use ''SLO Coast,'' ''San Luis Obispo Coast,'' and ''Central Coast'' as appellations of origin for wines made primarily from grapes grown within the SLO Coast AVA if the wines meet the eligibility requirements for the appellation. Additionally, vintners may use ''SLO Coast'' or ''San Luis Obispo Coast'' as an appellation of origin in addition to or in place of ''Edna Valley'' or ''Arroyo Grande Valley'' for wines made primarily from grapes grown in the Edna Valley or Arroyo Grande Valley AVAs if the wines meet the eligibility requirements for either of those two appellations.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.282 to read as follows:

§ 9.282 San Luis Obispo Coast.

(a) *Name.* The name of the viticultural area described in this section is ''San Luis Obispo Coast''. ''SLO Coast'' may also be used as the name of the viticultural area described in this section. For purposes of part 4 of this chapter, ''San Luis Obispo Coast'' and ''SLO Coast'' are terms of viticultural significance.

(b) *Approved maps.* The 24 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the San Luis Obispo Coast viticultural area are titled:

(1) Burro Mountain, 1995;

(2) Piedras Blancas, 1959; photoinspected 1976;

(3) San Simeon, 1958; photoinspected 1976;

(4) Pebblestone Shut-In, 1959; photoinspected 1976;

(5) Lime Mountain, 1948; photo revised 1979;

(6) Cypress Mountain, 1979;

(7) York Mountain, 1948; photorevised 1979;

(8) Morro Bay North, 1995;

(9) Atascadero, 1995;

(10) San Luis Obispo, 1968; photorevised 1978;

(11) Morro Bay South, 1965; photorevised 1978;

(12) Lopez Mountain, 1995;

(13) Arroyo Grande NE, 1985;

(14) Tar Spring Ridge, 1995;

(15) Nipomo, 1965;

(16) Huasna Peak, 1995;

(17) Twitchell Dam, 1959; photorevised 1982;

(18) Santa Maria, 1959; photorevised 1982;

(19) Oceano, 1965; revised 1994;
(20) Pismo Beach, 1998;
(21) Port San Luis, 1965; photorevised 1979;
(22) Cayucus, 1965; revised 1994;
(23) Cambria, 1959; photorevised 1979; and
(24) Pico Creek, 1959; photorevised 1979.

(c) *Boundary.* The San Luis Obispo Coast viticultural area is located in San Luis Obispo County in California. The boundary of the San Luis Obispo Coast viticultural area is as described below:

(1) The beginning point is on the Burro Mountain map at the intersection of the northern boundary of the Piedra Blanca Grant boundary and the Pacific Ocean. From the beginning point, proceed southeast along the grant boundary to its intersection with the western boundary of Section 15, T25S/R6E; then

(2) Proceed northeast in a straight line to a marked 1,462-foot peak in Section 11, T25S/R6E; then

(3) Proceed southeast in a straight line, crossing onto the Piedras Blancas map, to a marked 2,810-foot peak in Section 19, T25S/R7E; then

(4) Proceed southeast in a straight line, crossing onto the San Simeon map, to the 2,397-foot peak of Garrity Peak in the Piedra Blanca Land Grant; then

(5) Proceed east in a straight line to a marked 2,729-foot peak in Section 32, T25S/R8E; then

(6) Proceed southeast in a straight line, crossing onto the Pebblestone Shut-In map, to the 3,432-foot peak of Rocky Butte in Section 24, T26S/R8E; then

(7) Proceed southeast in a straight line to the 2,849-foot peak of Vulture Rock in Section 29, T26S/R9E; then

(8) Proceed southeast in a straight line, crossing over the Lime Mountain map and onto the Cypress Mountain map to the 2,933-foot peak of Cypress Mountain in Section 12, T27S/R9E; then

(9) Proceed southeast in a straight line, crossing onto the York Mountain map, to the intersection of Dover Canyon Road and a jeep trail in Dover Canyon in Section 14, T27S/R10E; then

(10) Proceed southwesterly, then southeasterly along the jeep trail to the point where the jeep trail becomes an unnamed light-duty road, and continuing southeasterly along the road to its intersection Santa Rita Creek in Section 25, T27S/R10E; then

(11) Proceed easterly along Santa Rita Creek to the point where the creek splits into a northern and a southern fork; then

(12) Proceed east in a straight line to Cayucos Templeton Road, then proceed south along Cayucos Templeton Road, crossing onto the Morro Bay North map and continuing along the road as it becomes Santa Rita Road, to the intersection of the road with the northeast boundary of Section 20, T28S/R11E; then

(13) Proceed southeast along the northeast boundary of Section 20 to its intersection with the western boundary of the Los Padres National Forest; then

(14) Proceed south, then southeasterly along the western boundary of the Los Padres National Forest, crossing over the Atascadero map and onto the San Luis Obispo map, to the intersection of the forest boundary with the boundary of the Camp San Luis Obispo National Guard Reservation at the northeastern corner of Section 32, T29S/R12E; then

(15) Proceed south, then generally southwesterly along the boundary of Camp San Luis Obispo National Guard Reservation, crossing onto the Morro Bay South map and then back onto the San Luis Obispo map, and then continuing generally easterly along the military reservation boundary to the intersection of the boundary with a marked 1,321-foot peak along the northern boundary of the Potrero de San Luis Obispo Land Grant; then

(16) Proceed southeast in a straight line, crossing onto the Lopez Mountain map, to the southeastern corner of Section 18, T30S/R13E; then

(17) Proceed southeasterly in a straight line to the southeast corner of Section 29; then

(18) Proceed southeasterly in a straight line to a marked 2,094-foot peak in Section 2, T31S/R13E; then

(19) Proceed southeasterly in a straight line, crossing onto the Arroyo Grande NE map, to the intersection of the 1,800-foot elevation contour and the western boundary of the Los Padres National Forest, along the eastern boundary of Section 12, T31S/R13E; then

(20) Proceed south along the boundary of the Los Padres National Forest to the southeastern corner of Section 13, T31S/R13E; then

(21) Proceed southeast in a straight line to a marked 1,884-foot peak in Section 19, T31S/R14E; then

(22) Proceed southeast in a straight line to northwestern-most corner of the boundary of the Lopez Lake Recreation Area in Section 19, T31S/R14E; then

(23) Proceed south, then generally east along the boundary of the Lopez Lake Recreation Area, crossing onto the Tar Spring Ridge map, to the intersection of the boundary with an unnamed light-duty road known locally as Lopez Drive west of the Lopez Dam spillway in Section 32, T31S/R14E; then

(24) Proceed east along Lopez Drive to its intersection with an unnamed light-duty road known as Hi Mountain Road in Section 34, T31S/R14E; then

(25) Proceed east along Hi Mountain Drive to its intersection with an unnamed light-duty road known locally as Upper Lopez Canyon Road in the Arroyo Grande Land Grant; then

(26) Proceed north along Upper Lopez Canyon Road to its intersection with an unnamed, unimproved road that runs south to Ranchita Ranch; then

(27) Proceed northeast in a straight line to a marked 1,183-foot peak in Section 19, T31S/R15E; then

(28) Proceed southeast in a straight line to a marked 1,022-foot peak in Section 29, T31S/R15E; then

(29) Proceed southwest in a straight line to a marked 1,310-foot peak in Section 30, T31S/R15E; then

(30) Proceed southeast in a straight line to a marked 1,261-foot peak in Section 32, T31S/R15E; then

(31) Proceed southeast in a straight line to a marked 1,436-foot peak in Section 4, T32S/R15E; then

(32) Proceed southwest in a straight line to a marked 1,308-foot peak in the Huasna Land Grant; then

(33) Proceed westerly in a straight line to a marked 1,070-foot peak in Section 1, T32S/R14E; then

(34) Proceed southeast in a straight line to a marked 1,251-foot peak in the Huasna Land Grant; then

(35) Proceed southwest in a straight line to a marked 1,458-foot peak in the Santa Manuela Land Grant; then

(36) Proceed southeast in a straight line to a marked 1,377-foot peak in the Huasna Land Grant; then

(37) Proceed southwest in a straight line, crossing onto the Nipomo map, to a marked 1,593-foot peak in the Santa Manuela Land Grant; then

(38) Proceed southwest in a straight line to the jeep trail immediately north of a marked 1,549-foot peak in Section 35, T32S/R14E; then

(39) Proceed northwesterly along the jeep trail to its intersection with an unnamed, unimproved road in the Santa Manuela Land Grant; then

(40) Proceed south along the unimproved road to its intersection with Upper Los Berros Road No. 2 in Section 33, T32S/R14E; then

(41) Proceed southeast along Upper Los Berros Road No. 2, crossing onto the Huasna Peak map, to the intersection of the road and State Highway 166; then

(42) Proceed south, then westerly along State Highway 166, crossing over the Twitchell Dam, Santa Maria, and Nipomo maps, then back onto the Santa Maria map, to the intersection of State Highway 166 with U.S. Highway 101 in the Nipomo Land Grant; then

(43) Proceed south along U.S. Highway 101 to its intersection with the north bank of the Santa Maria River; then

(44) Proceed west along the north bank of the Santa Maria River to its intersection with the 200-foot elevation contour; then

(45) Proceed generally west along the 200-foot elevation contour, crossing over the Nipomo map and onto the Oceano map, to a point north of where the north-south trending 100-foot elevation contour makes a sharp westerly turn in the Guadalupe Land Grant; then

(46) Proceed due south in a straight line to the 100-foot elevation contour; then

(47) Proceed westerly along the 100-foot elevation contour to its intersection with State Highway 1 in the Guadalupe Land Grant; then

(48) Proceed northwesterly in a straight line to the eastern boundary of the Pismo Dunes State Vehicular Recreation Area at Lettuce Lake in the Bolsa de Chamisal Land Grant; then

(49) Proceed northerly along the eastern boundary of the Pismo Dunes State Vehicular Recreation Area to the point where the boundary makes a sharp westerly turn just west of Black Lake in the Bolsa de Chamisal Land Grant; then

(50) Northerly along the Indefinite Boundary of the Pismo Dunes National Preserve to corner just west of Black Lake in the Bolsa de Chamisal Land Grant; then

(51) Proceed east in a straight line to an unnamed four wheel drive road east of Black Lake in the Bolsa de Chamisal Land Grant; then

(52) Proceed north along the western fork of the four wheel drive road as it meanders to the east of White Lake, Big Twin Lake, and Pipeline Lake, to the point where the road intersects an unnamed creek at the southeastern end of Cienega Valley in the Bolsa de Chamisal Land Grant; then

(53) Proceed northwesterly along the creek to its intersection with an unnamed dirt road known locally as Delta Lane south of the Oceano Airport; then

(54) Proceed northerly along Delta Lane to its intersection with an unnamed light-duty road known locally as Ocean Street; then

(55) Proceed east in a straight line to State Highway 1; then

(56) Proceed northerly on State Highway 1, crossing onto the Pismo Beach map, to the highway's intersection with a light-duty road known locally as Harloe Avenue; then

(57) Proceed west along Harloe Avenue to its intersection with the boundary of Pismo State Beach; then

(58) Proceed northwesterly along the boundary of Pismo State Beach to its intersection with the Pacific Ocean coastline; then

(59) Proceed northerly along the Pacific Ocean coastline, crossing over the Pismo Beach, Port San Luis, Morro Bay South, Morro Bay North, Cayucos, Cambria, Pico Creek, San Simeon, and Piedras Blancas maps and onto the Burro Mountain map, returning to the beginning point.

Signed: March 2, 2022.

Mary G. Ryan,

Administrator.

Approved: March 2, 2022.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–05000 Filed 3–8–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0136]

Special Local Regulation; Annual Boyne Thunder Poker Run, Charlevoix, MI

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Annual Boyne Thunder Poker Run special local regulation on Round Lake and Pine River Channel, Charlevoix, MI on July 9, 2022. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after this event. During the enforcement period, entry into, transiting, or anchoring within the safety zone are prohibited unless authorized by the Captain of the Port Sault Sainte Marie or a designated representative.

DATES: The regulations in 33 CFR 100.929 will be enforced from 8 a.m. through 5 p.m. on July 9, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Deaven Palenzuela, Chief of Waterways Management Division, U.S. Coast Guard; telephone 906–635–3223, email *ssmprevention@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.929 for the Annual Boyne Thunder Poker Run in Boyne City, MI from 8 a.m. to 5 p.m. on July 9, 2022. This action is being taken to protect the safety of life and property on navigable waters prior to, during, and immediately after the event. Our regulation for marine events within the Ninth Coast Guard District, 33 CFR 100.929, specifies the location of the regulated area for the Annual Boyne Thunder Poker Run in Round Lake and Pine River Channel, Charlevoix, MI. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sault Sainte Marie or a designated representative. Vessels and persons granted permission to enter the special local regulated area shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie, or an on-scene representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and/or marine information broadcasts.

Dated: March 3, 2022.

A.R. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2022–04949 Filed 3–8–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0145]

RIN 1625–AA87

Security Zones; Christina River, Wilmington, DE; Darby Creek and Schuylkill River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary security zones for certain navigable waters of the Christina and Schuylkill Rivers and Darby Creek. The security zones are needed to safeguard persons, including those under the protection of the United States Capitol Police (USCP), and property from terrorist acts or incidents and to prevent terrorist acts or incidents

while travelling across navigable waters between Wilmington, DE, and Philadelphia, PA. These security zones will be enforced only for the protection of those persons when in the area and will restrict vessel traffic while the zones are being enforced. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port, Delaware Bay or a designated representative.

DATES: This rule is effective from 11 a.m. on March 9, 2022, until 11 p.m. on March 11, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0145 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, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215–271–4889, email *Jennifer.L.Padilla@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

Persons under the protection of the USCP will be travelling to and from a nationally-publicized event in Philadelphia, PA, on March 9, 2022, and March 11, 2022, respectively. The highways to be travelled are located across navigable waters within the Captain of the Port, Delaware Bay's Area of Responsibility, as set forth at 33 CFR 3.25–05.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to public interest to delay the effective date of this rule. Immediate action is needed to protect persons under the protection of the USCP, mitigate potential terrorist acts, and enhance public and maritime safety and security. The Coast Guard was unable to publish an NPRM due to the short time period between event planners notifying the Coast Guard of the event and publication of these security zones. Furthermore, delaying the effective date would be contrary to the rule's intended objective of protecting persons under the protection of the USCP, mitigating potential terrorist acts and enhancing public and maritime safety and security. It is impracticable to publish an NPRM because we must establish the security zones by March 9, 2022.

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 because immediate action to restrict vessel traffic is needed to protect life, property and the environment, therefore a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zones' intended objectives of protecting persons under the protection of the USCP, mitigating potential terrorist acts and enhancing public and maritime safety and security.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Delaware Bay (COTP) has determined that the presence of persons under the protection of the USCP at these locations presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This rule is needed to protect persons under the protection of the USCP, personnel in and around these locations, navigable waterways, and waterfront facilities.

IV. Discussion of the Rule

This rule establishes three temporary security zones from for certain navigable waters within the COTP Delaware Bay Zone, as described in 33 CFR 3.25–05. Each of the zones will be enforced from 11 a.m. to 11 p.m. on March 9, 2022, and those same hours on March 11, 2022. The duration of the zones is intended to protect persons under the protection of the USCP, personnel in and around these locations, navigable waterways, and waterfront facilities.

Security zone one will cover all navigable waters of the Christina River, encompassed by a line connecting the following points, beginning at the shoreline down river from the I–495 bridge at 39°43′24″ N, 075°31′43″ W, thence southwest across the river to the shoreline at 39°43′17″ N, 075°31′52″ W, thence northwest along the shoreline to 39°43′46″ N, 075°32′06″ W, thence northeast across the river to the shoreline at 39°43′53″ N, 075°31′55″ W, thence southeast along the shoreline back to the beginning point, located in Wilmington, DE.

Security zone two will cover all navigable waters of Darby Creek, encompassed by a line connecting the following points, beginning at the shoreline down river from the I–95 bridge at 39°51′52″ N, 075°18′46″ W, thence northwest across the river to the shoreline at 39°51′53″ N, 075°18′50″ W, thence northeast along the shoreline to 39°52′20″ N, 075°18′39″ W, thence southeast across the river to the shoreline at 39°52′08″ N, 075°18′31″ W, thence southwest along the shoreline back to the beginning point, located in Philadelphia, PA.

Security zone three will cover all navigable waters of Schuylkill River, including the waters of the Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, encompassed by a line connecting the following points, beginning at the shoreline down river from the Girard Point Bridge (I–95) at 39°53′05″ N, 075°11′34″ W, thence westward across the river to the shoreline at 39°53′03″ N, 075°11′48″ W, thence northwest along the shoreline to 39°54′04″ N, 075°12′56″ W, thence eastward across the river to the shoreline at 39°54′07″ N, 075°12′48″ W, thence southeast along the shoreline back to the beginning point, located in Philadelphia, PA.

No vessel or person will be permitted to enter any of the security zones without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the sizes, locations, and limited durations of the security zones. The first zone impacts a small designated area of the Christina River for 24 total enforcement hours. This portion of the waterway supports Commercial Vessels and tug and barge traffic year round and recreational vessel traffic, which at its peak, occurs mainly during the summer season. The second zone impacts a small designated area of the Darby Creek for 24 total enforcement hours. This portion of the waterway supports recreational vessel traffic, which at its peak, occurs mainly during the summer season. The third zone impacts a small designated area of the Schuylkill River for 24 total enforcement hours. This portion of the waterway supports Commercial Vessels and tug and barge traffic year round and recreational vessel traffic, which at its peak, occurs mainly during the summer season. Although these security zones extend across the entire widths of the respective waterways, these security zones will be enforced only for the protection of those persons when in the area and will restrict vessel traffic while the zones are being enforced. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the security zones.

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 security zones 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 three temporary security zones lasting only 24 total enforcement hours each that will prohibit entry within certain navigable waters of the Christina and Schuylkill Rivers and Darby Creek. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0145 to read as follows:

§ 165.T05–0145 Security Zones; Christina River, Wilmington, DE; Darby Creek and Schuylkill River, Philadelphia, PA.

(a) *Locations.* The following areas are a security zone: These coordinates are based on WGS 84.

(1) *Security Zone 1.* All navigable waters of the Christina River, encompassed by a line connecting the following points, beginning at the shoreline down river from the I–495 bridge at 39°43′24″ N, 075°31′43″ W, thence southwest across the river to the shoreline at 39°43′17″ N, 075°31′52″ W, thence northwest along the shoreline to 39°43′46″ N, 075°32′06″ W, thence northeast across the river to the shoreline at 39°43′53″ N, 075°31′55″ W, thence southeast along the shoreline back to the beginning point, located in Wilmington, DE.

(2) *Security Zone 2.* All navigable waters of the Darby Creek, encompassed by a line connecting the following points, beginning at the shoreline down river from the I–95 bridge at 39°51′52″ N, 075°18′46″ W, thence northwest across the river to the shoreline at 39°51′53″ N, 075°18′50″ W, thence northeast along the shoreline to 39°52′20″ N, 075°18′39″ W, thence southeast across the river to the shoreline at 39°52′08″ N, 075°18′31″ W, thence southwest along the shoreline back to the beginning point, located in Philadelphia, PA.

(3) *Security Zone 3.* All navigable waters of the Schuylkill River, including the waters of the Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, encompassed by a line connecting the following points, beginning at the shoreline down river from the Girard Point Bridge (I–95) at 39°53′05″ N, 075°11′34″ W, thence westward across the river to the shoreline at 39°53′03″ N, 075°11′48″ W, thence northwest along the shoreline to 39°54′04″ N, 075°12′56″ W, thence eastward across the river to the shoreline at 39°54′07″ N, 075°12′48″ W, thence southeast along the shoreline back to the beginning point, located in Philadelphia, PA.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Delaware Bay.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the security zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 215–271–4807 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 11 a.m. to 11 p.m. on March 9, 2022, and, from 11 a.m. to 11 p.m. on March 11, 2022.

Dated: March 3, 2022.

Jonathan D. Theel,

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

[FR Doc. 2022–04900 Filed 3–8–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0040]

RIN 1625–AA87

Security Zone, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone for certain waters of the Delaware River. This action is necessary to provide protection of Very Important Persons (VIPs) while attending the Democratic National Caucus (DNC) on the Delaware River in the vicinity of Penns Landing located in Philadelphia, PA. This security zone will be enforced intermittently and only for the protection of VIPs when in the area and will restrict vessel traffic while the zones are being enforced. This security zone would prohibit persons and vessels from being in the security zone unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective March 9, 2022, through March 11, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0040 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, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; 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 January 12, 2022, the United States Capitol Police notified the Coast Guard that the Democratic National Caucus (DNC) is being held in the vicinity of Penns Landing located in Philadelphia, PA, from 11 a.m. on March 9, 2022, through 11:59 p.m. on March 11, 2022. The DNC is being held adjacent to the Delaware River and this security zone is needed to provide protection and security of the VIPs attending the Democratic National Caucus in the vicinity of this waterway. In response, on February 15, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Security Zone, Delaware River, Philadelphia, PA'' (87 FR 8472). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended February 23, 2022, we received no comments.

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. This rule must be immediately effective to guard against potential acts of terrorism, sabotage, subversive acts, accidents, or other causes of a similar nature.

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 Captain of the Port Delaware Bay (COTP) has determined that the presence of the VIPs attending the DNC present a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. Due to the DNC being held in close proximity to the Delaware River,

this security zone is necessary to protect these persons, the public, and the surrounding waterway.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 15, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a security zone from March 9, 2022, through March 11, 2022, on certain waters of the Delaware River in Philadelphia, PA. Specifically, the security zone would cover all waters within the Delaware River contiguous to the Pennsylvania shoreline and extending out into the Delaware River approximately 250 yards within an area bounded by a line connecting the following points: Beginning at the Pennsylvania shoreline at latitude 39°56.87′ N, longitude 075°8.36′ W, thence east to latitude 39°56.85′ N, longitude 075°8.20′ W, thence south to latitude 39°56.45′ N, longitude 075°8.25′ W, thence west to the Pennsylvania shoreline at latitude 39°56.47′ N, longitude 075°8.41′ W, thence north following the shoreline to the originating point.

This zone will be enforced intermittently during the effective dates. Enforcement of this zone will be broadcast via Broadcast Notice to Mariners on VHF–FM marine channel 16 as well as actual notice via on-scene Coast Guard Personnel.

No vessel or person will be permitted to enter or transit these security zones without obtaining permission from the COTP or a designated representative and must proceed as directed by on scene enforcement vessels. Any vessel permitted to transit the zone will be required to continue through the zone without pause or delay as directed by on-scene enforcement vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the duration, size, location and time of year of the zone. During this time of year, this Security Zone is primarily used by Commercial Traffic. That traffic will be permitted to transit through the zone without pause or delay upon receiving approval of on-scene enforcement vessels. This zone will only be enforced for limited durations when deemed necessary by the COTP to augment the protection of the VIPs attending the Democratic National Caucus.

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 received no comments from the Small Business Administration on this rulemaking. 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 security zone may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

security zone which will be intermittently enforced over the course of 3 days. It is categorically excluded from further review under paragraph L60[a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0040 to read as follows:

§ 165.T05–0040 Security Zone, Delaware River, Philadelphia, PA.

(a) *Location.* The following area is a security zone: All waters within the Delaware River, contiguous with the Pennsylvania shoreline and extending out into the Delaware River approximately 250 yards, within an area bounded by a line connecting the following points: Beginning at the Pennsylvania shoreline at latitude 39°56.87′ N, longitude 075°8.36′ W, thence east to latitude 39°56.85′ N, longitude 075°8.20′ W, thence south to latitude 39°56.45′ N, longitude 075°8.25′ W, thence west to the Pennsylvania shoreline at latitude 39°56.47′ N, longitude 075°8.41′ W, thence north following the shoreline to the originating point. These coordinates are based on North American Datum 83 (NAD83).

(b) *Definitions.* As used in this section—

Designated Representative means any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Very Important Person (VIP) means any person for whom the United States Capital Police request implementation of a security zone in order to supplement protection of said person(s).

Official Patrol Vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

(c) *Regulations.* (1) In accordance with the general regulations contained in subpart D of this part, entry into or remaining in the zone described in paragraph (a) of section is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. Access to the zone will be determined by the COTP or designated representative on a case-by-case basis when the zone is enforced. To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 13 or 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(4) Unless specifically authorized by on scene enforcement vessels, any vessel granted permission to enter or transit the security zones must comply with the instructions of the COTP or designated representative and operate at bare steerage or no-wake speed while transiting through the Security Zone, and must not loiter, stop, or anchor, and shall do so for the entirety of its time within the boundaries of the security zones.

(d) *Enforcement.* (1) This security zone is effective from 11 a.m. on March 9, 2022, through 11:59 p.m. on March 11, 2022.

(2) This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on-scene, as well as other methods listed in 33 CFR 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection and security of the VIPs attending the Democratic National Caucus in the vicinity of Penns Landing located in Philadelphia, PA. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: March 3, 2022.

Jonathan D. Theel,

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

[FR Doc. 2022–04904 Filed 3–8–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0130]

Safety Zone; Spirit Lake Dredging

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the USX Superfund Site Safety Zones: St. Louis River, and this notice of enforcement serves as a reminder to mariners this is still an enforced safety zone under Coast Guard regulations. Our regulation for safety zones within the Ninth Coast Guard District identifies this area as a regulated area within Spirit Lake Duluth, MN.

DATES: The regulations in 33 CFR 165.905(a)(1) and (2) will be enforced from April 4, 2022, through September 15, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LTJG Joseph R. McGinnis, MSU Duluth Waterways Management, U.S. Coast Guard; telephone 218–725–3818, email *D09-SMB-MSUDuluthWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the USX Superfund Site Safety Zone: St. Louis River, and this notice of enforcement serves as a reminder to mariners this is still an enforced safety zone under 33 CFR

165.905(a)(1) and (2). The USX Superfund Site Safety Zone: St. Louis River, includes Safety Zone #1 (North Spirit Lake): North Boundary 46°41′33″ W, South Boundary 46°41′18″ W, East Boundary 92°11′53″ W, West Boundary 92°12′11″ W, and Safety Zone #2 (South Spirit Lake): North Boundary 46°40′45″ N, South Boundary 46°40′33″ N, East Boundary 92°11′40″ W, West Boundary 92°12′05″ W. Transit of vessels through the waters covered by these zones is prohibited. Swimming (including water skiing or other recreational use of the water which involves a substantial risk of immersion in the water) or taking of fish (including all forms of aquatic animals) from the waters covered by these safety zones is prohibited at all times. Our regulation for safety zones within the Ninth Coast Guard District identifies this area is a regulated area within Spirit Lake Duluth, MN. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: March 3, 2022.

Frances M. Smith,

Captain of the Port MSU Duluth, CDR, U.S. Coast Guard.

[FR Doc. 2022–04905 Filed 3–8–22; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 223

[Docket No. 2021–4]

Small Claims Procedures for Library and Archives Opt-Outs and Class Actions

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule regarding the procedures for libraries and archives to preemptively opt out of proceedings before the Copyright Claims Board (''CCB'') and the procedures for a party before the CCB with respect to a class action proceeding, under the Copyright Alternative in Small-Claims Enforcement Act of 2020.

DATES: Effective April 8, 2022.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov,* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Alternative in Small-Claims Enforcement (''CASE'') Act of 2020 [1] directs the Copyright Office to establish the Copyright Claims Board (''CCB'' or ''Board''), a voluntary tribunal within the Office comprised of three Copyright Claims Officers who have the authority to render determinations on certain copyright claims for economic recoveries under the statutory threshold. The Office issued a notification of inquiry (''NOI'') to describe the CASE Act's legislative background and regulatory scope and to ask for public input on various topics, including procedures addressing a preemptive opt-out from CASE Act proceedings (sometimes referred to as a ''blanket'' opt-out) for libraries and archives and procedures associated with class actions.[2]

The CASE Act directs the Register of Copyrights to ''establish regulations allowing for a library or archives that does not wish to participate in proceedings before the Copyright Claims Board to preemptively opt out of such proceedings.'' [3] The Office must also ''compile and maintain a publicly available list of the libraries and archives that have successfully opted out of proceedings.'' [4] For a library or archives to qualify for the opt-out election, it must ''qualif[y] for the limitations on exclusive rights under section 108 [of title 17].'' [5]

The CASE Act also provides that the Register will establish procedures for a claimant ''who receives notice of a pending class action, arising out of the same transaction or occurrence as the proceeding before the [CCB],'' including the ability to ''opt out of the class action.'' [6]

In September 2021, the Office published a notice of proposed rulemaking (''NPRM'') addressing these two topics in depth and proposing regulatory language.[7] In both the NOI and the NPRM, the Office requested input on issues related to the library and archives opt-out provision, including whether the Office should require proof or a certification that a library or archives qualifies for the opt-out provision; which entities, principals, or agents should be allowed to opt out on behalf of a library or archives; how the opt-out provision would apply to library or archives employees; and various transparency and functionality considerations related to publication of the opt-out list.[8] Commenters were generally supportive of the proposed library and archives opt-out regulations, with the exception of the matters addressed below. No parties submitted comments addressing the proposed class action regulations. The Office is adopting the proposed class action regulations with one clarification, as addressed below.

II. Discussion of Final Rule

A. Proof or Certification Requirement

The Office's NPRM proposed ''that any library or archives that wishes to take advantage of the statutory preemptive opt-out option must submit a self-certification that it 'qualifies for the limitations on exclusive rights under section 108.' '' [9] The Office explained that this requirement could ''balance the statutory goals of ensuring that *only* libraries and archives are eligible for a preemptive opt-out, but also that any such entities are not overly burdened in effecting that election.'' [10] The proposed rule also stated that any library or archives that had preemptively opted out, but that was later found by a federal court not to qualify for the section 108 exemptions, must report this finding to the CCB.

The Office proposed to ''accept the facts stated in the opt-out submission unless they are implausible or conflict with sources of information that are known to the Office or the general public.'' [11] Where the CCB believes that an entity does not qualify under section 108, that entity would be not be added to, or would be removed from, the preemptive opt-out list. The Office would communicate its conclusion and

[1] Public Law 116–260, sec. 212, 134 Stat. 1182, 2176 (2020).

[2] 86 FR 16156, 16161 (Mar. 26, 2021).

[3] 17 U.S.C. 1506(aa)(1).

[4] *Id.* at 1506(aa)(2)(B).

[5] *Id.* at 1506(aa)(4). The CASE Act's legislative history does not discuss the library and archives opt-out provision. *See generally* S. Rep. No. 116–105 (2019); H.R. Rep. No. 116–252 (2019) (Note, the CASE Act's legislative history cited is for the CASE Act of 2019, S. 1273, 116th Cong. (2019) and H.R. 2426, 116th Cong. (2019), bills largely identical to the CASE Act of 2020, with the notable exception that these earlier bills did not contain the libraries and archives opt-out provision.).

[6] *Id.* at 1507(b)(2).

[7] 86 FR 49273 (Sept. 2, 2021). Comments received in response to the March 26, 2021 NOI and September 2, 2021 NPRM are available at *https://www.regulations.gov/document/COLC-2021-0001-0001/comment* and *https://www.regulations.gov/document/COLC-2021-0003-0001/comment,* respectively. References to these comments are by party name (abbreviated where appropriate), followed by ''Initial NOI Comments,'' ''Reply NOI Comments,'' or ''NPRM Comments,'' as appropriate.

[8] 86 FR at 16161; 86 FR at 49274–77.

[9] 86 FR at 49275 (quoting 17 U.S.C. 1506(aa)(4)).

[10] *Id.*

[11] *Id.* The Office takes a similar approach regarding registration materials. *See* U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 309.2 (3d ed. 2021).

its intent to either not add the entity to the preemptive opt-out list or remove the entity from that list, as appropriate, and would allow the entity to provide evidence supporting its qualification for the exemption within 30 days of the Office's notice. If the Register subsequently determined that the evidence submitted by the entity demonstrates that it qualifies under section 108, the entity would be added to, or remain on, the preemptive opt-out list. The Office did not believe it was necessary to establish a separate adversarial procedure for parties to raise objections that an entity does not qualify for the opt-out list. Instead, the Office proposed that claimants who attempt to bring claims against entities on the opt-out list can assert that the subject library or archives does not qualify for inclusion on the list as part of their claim.[12]

The American Association of Law Libraries (''AALL'') supported the self-certification provision, calling it ''[e]specially important'' and one of several provisions that would allow easy and efficient opt-out elections.[13] The Niskanen Center also favored the self-certification approach, but suggested that any misrepresentation penalty ''should not necessarily be perjury,'' and that ''any sanctions applied (other than the loss [of] the ability to opt out as defined in the Act) should only be applied if the party which made the misrepresentations did so with intent.'' [14] Those representing libraries generally favored self-certification.[15]

Other commenters suggested that a self-certification process could lead to fraudulent opt-outs [16] and would lead to delays or inefficiencies in CCB proceedings.[17] Some supported a requirement that any certifications be made under penalty of perjury.[18] Commenter Terisa Shoremount suggested that the Office should require ''a short statement about the entity's basis for qualifying to opt-out,'' which would ''not overly burden libraries and archives'' and ''could promote efficiency,'' and that publishing this statement on the library and archives opt-out list would increase transparency by ''allow[ing] potential adversaries to view why the library or archive[s] qualifies which may reduce opt-out status challenges.'' [19]

Regarding the effect of a library or archives opt-out election, the Copyright Alliance et al. reiterated their position that these regulations ''should clearly state that a determination by the CCB regarding an entity's status as qualifying for the blanket opt-out should not be relied upon or cited by any other tribunal in determining whether an entity qualifies for the exceptions under section 108 of the Copyright Act.'' [20] Relatedly, the Science Fiction and Fantasy Writers of America ''strongly advise[d] the [Office] to refrain from placing entities on its list of libraries and archives that have opted out if those entities are parties in ongoing, related litigation,'' believing that the Office's ''official acceptance of a self-serving declaration could well affect the course of the judicial proceeding and its ultimate outcome.'' [21] They also suggested that the CCB hold its determination in abeyance pending ongoing litigation.[22] The Niskanen Center also argued that the Copyright Office should make a determination whether a library or archives qualifies for the opt-out, ''only if there are no appeals pending in superior courts.'' [23]

The Office believes that the proposed rule addresses commenters' concerns, but will include additional language in the final rule confirming that the CCB's acceptance of an entity's representation regarding its qualifying status for the preemptive opt-out does not constitute a legal conclusion by the Board or the Register of Copyrights for any other purpose. To help identify the entity that is seeking to preemptively opt out of CCB proceedings, the final rule will require those libraries and archives that have a website to supply its address. Further, the requirement that any certification must be made under the penalty of perjury will deter fraudulent submissions and, as the federal law prohibiting fraudulent statements made to legislative agencies already requires an intent element,[24] the rule does not need to include a separate intent element.

Finally, the Office does not believe the CCB should be required to hold its determination in abeyance pending appeals or ongoing litigation where an entity's qualification for section 108 is at issue. As federal litigation can take years to resolve, waiting for a court's final determination regarding a purported library's or archives' status could undercut the CCB's value in resolving claims expeditiously. Further, if the court ultimately determines that the entity qualifies under section 108, the claimant could unwittingly exhaust the statute of limitations. Importantly, the preemptive opt-out option only offers a jurisdictional privilege—respondents can always opt out of individual CCB proceedings, even if the preemptive opt-out is unavailable.

B. Opt-Out Election Timing and Disqualification

The NPRM stated that ''[t]he Office will accept the facts stated in the opt-out submission unless they are implausible or conflict with sources of information that are known to the Office or the general public.'' [25] The proposed rule also required that ''any library or archives that has been found by a federal court not to qualify for the

[12] 86 FR at 49275.

[13] Am. Ass'n of L. Libraries (''AALL'') NPRM Comments at 1; *see also* AALL Initial NOI Comments at 1–2 (noting that a self-certification approach ''would meet the intent of Congress, which created the preemptive opt out for libraries and archives to provide an efficient and streamlined system for these organizations and to help them avoid the burdensome administrative requirements of repeated opt outs'').

[14] Niskanen Ctr. NPRM Comments at 2.

[15] *See* Library Copyright All. (''LCA'') Initial NOI Comments at 1; Univ. of Mich. Library Initial NOI Comments at 4–5; Univ. Infor. Pol'y Officers Reply NOI Comments at 1.

[16] Sci. Fiction & Fantasy Writers of Am. (''SFWA'') NPRM Comments at 2 (noting the potential for ''internet pirates'' who ''describe themselves as 'libraries' or 'archives' to mislead others'' who would try to use the blanket opt-out option); Am. Intell. Prop. L. Ass'n (''AIPLA'') Initial NOI Comments at 4; Copyright Alliance, Am. Photographic Artists, Am. Soc'y for Collective Rights Licensing, Am. Soc'y of Media Photographers, The Authors Guild, CreativeFuture, Digital Media Licensing Ass'n, Graphic Artists Guild, Indep. Book Pubs. Ass'n, Music Creators N. Am., Nat'l Music Council of the U.S., Nat'l Press Photographers Ass'n, N. Am. Nature Photography Ass'n, Prof. Photographers of Am., Recording Academy, Screen Actors Guild-Am. Fed. of Television and Radio Artists, Soc'y of Composers & Lyricists, Songwriters Guild of Am. & Songwriters of N. Am. (''Copyright Alliance et al.'') Reply NOI Comments at 12–13 (''To allow entities to 'self-certify' would be to open the blanket opt out to any entity claiming to be a 'library' or 'archive' regardless of whether the entity rightfully qualifies under the law.'').

[17] SFWA NPRM Comments at 2–3 (noting concerns that a library or archives would remain on the opt-out list until the CCB makes a final determination on its status and suggesting that the CCB should thus ''refrain from granting the entity status as a library or archives until such time as it has conducted an adequate review'').

[18] Copyright Alliance et al. NPRM Comments at 6; SFWA Reply NOI Comments at 2 (agreeing that a ''library or archive[s] should make its declaration under penalty of perjury''); *see also* Copyright Alliance et al. Initial NOI Comments at 20 (supporting that opt-out elections should be made under ''penalty of perjury'' and voicing concerns related to courts relying on an Office or CCB section 108 qualification determination).

[19] Terisa Shoremount NPRM Comments at 1.

[20] Copyright Alliance et al. NPRM Comments at 6; *see also* MPA, RIAA & SIIA Reply NOI Comments at 10; LCA Reply NOI Comments at 1–2.

[21] SFWA NPRM Comments at 3.

[22] *Id.*

[23] Niskanen Ctr. NPRM Comments at 2.

[24] *See* 18 U.S.C. 1001(a)(3) (requiring that any document submitted to a Federal agency must be ''materially false, fictitious, or fraudulent statement or entry'' and made ''knowingly and willfully'' to be a violation).

[25] 86 FR at 49275 (citing U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 309.2 (3d ed. 2021)).

section 108 exemptions report this information to the CCB.'' [26] In either circumstance, the entity would not be added to, or would be removed from, the opt-out list. Third parties would not be allowed to challenge an entity's preemptive opt-out eligibility, separate from the CCB's adjudication of individual cases.[27] The proposed rule did not address the review criteria and standards by which a library or archives would not be added to, or be removed from, the opt-out list; the effect of such a removal; and the timing of an opt-out election with respect to active claims.

Commenters asked the Office to clarify rules related to these issues. With respect to the CCB's review criteria and standards, the Science Fiction and Fantasy Writers of America and Copyright Alliance et al. each noted that the proposed regulations do not identify either a review scope or timeline for when the CCB must evaluate whether a library or archives qualifies for the preemptive opt-out list.[28] The Copyright Alliance et al. suggested that ''[t]he scope of the review in the library and archives opt-out context would require, at minimum, a simple web search to determine if in fact the facts stated within the opt-out submission are in conflict with information known to the public'' and, further, that ''it is unclear whether the Office intends to take a ministerial approach, whereby it places entities on the list with little or no initial review, with the ability to later remove those entities, or if it will take a more proactive and discretionary approach, whereby it reviews each submission before placing the entity on the list, while maintaining the ability to remove the entity later if appropriate,'' concluding that it preferred the ''proactive and discretionary'' approach.[29] The Science Fiction and Fantasy Writers of America stated that the CCB should have ''the affirmative obligation to look beyond a mere declaration in determining whether an entity is actually a library or archive[s] in accordance with case law when there is strong reason to do so.'' [30] Taking an opposing view, the Niskanen Center stated that it would be preferable for an Article III court to handle disputes over whether an entity qualifies as a library or archives under section 108, elaborating that ''[t]his would reduce the burden on the Copyright Office and the Copyright Claims Board and keep implementation within the spirit of the CASE Act as an efficient-low cost tool to *apply* legal questions which have already been answered by a traditional Article III Court.'' [31]

The Office concludes that the NPRM approach, which neither requires nor prohibits the CCB from inquiring into whether an entity qualifies for the library and archives preemptive opt-out election, appropriately balances efficiency and the need to exclude ineligible entities. The aforementioned additional requirement to supply a website address in the opt-out request should help flag whether the entity qualifies for the opt-out election. The Office also believes that a modification to the procedure when a claim is filed against a library or archives that is included on the opt-out list will result in greater efficiency. As provided in the proposed rule, a claim filed against a library or archives on the opt-out list must assert material factual allegations supporting the claimant's challenge to the subject library's or archives' eligibility for the opt-out. The Office concludes that an initial determination of the viability of the challenge will be made prior to approving service of the claim. If the claim's allegations are colorable, the CCB will notify the subject library or archives of the challenge to its qualifications and the library or archives will have an opportunity to provide evidence supporting its qualifications before a decision is made either to dismiss the claim against it or to remove the entity from the opt-out list and allow the claim to proceed to compliance review. As mentioned above, if the claim is permitted to proceed, the respondent entity would retain the ability to opt out of the individual claim.

The Copyright Alliance et al. also suggested that an entity that fails to notify the Office of changes in relevant contact information or of a determination by a court that it does not qualify for the section 108 exceptions should lose the ability to preemptively opt out of CCB proceedings.[32] The Office believes that the CCB should be able to take any reasonable corrective action against a library or archives that violates these regulations. While a court determination that a library or archives does not qualify for section 108 will automatically result in the entity losing the ability to preemptively opt out of CCB proceedings, the CCB may determine that willful conduct or a pattern of noncompliance should have the same result, although the Office anticipates that such corrective action would be necessary on only rare occasions.

With respect to the effective date of a preemptive opt-out election, the Copyright Alliance et al. argued that such an election should be ''forward reaching only'' and not apply to any claims that were filed against the libraries or archives before they were added to the publicly available list, even if their opt-out request had been filed and was under review prior to the filing date of the claim.[33] Alternatively, they asked that ''any fees paid by the claimant [be] refundable if a claimant is prevented from moving forward with a case because the library or archives had filed to preemptively opt-out before the case was filed.'' [34]

The Office agrees that the statute clearly provides that the opt-out election for library and archives should be prospective, because it is a *preemptive* election. Accordingly, once a claimant has been instructed by the CCB to serve its claim on an entity, a subsequently-approved preemptive opt-out election would not apply to that claim. In that situation, the library or archives would be in the same position as other respondents and may file an opt-out election to the specific claim.

The Office acknowledges that there could be a situation where an entity has submitted its application for the preemptive opt-out, but its application is filed or still under review at a point in time when the CCB has already found a claim against the entity to be compliant and has instructed the claimant to serve the claim. To provide for this limited situation, the Office concludes that the effective date of a preemptive opt-out request is the date the library or archives is added to the public opt-out list.[35] Practically, this should not pose a significant problem for entities seeking to opt out preemptively, as the opt-out election will become available to libraries and

[26] *Id.*

[27] *Id.*

[28] Copyright Alliance et al. NPRM Comments at 7–8; SFWA NPRM Comments at 2–3.

[29] Copyright Alliance et al. NPRM Comments at 7–8.

[30] SFWA NPRM Comments at 2.

[31] Niskanen Ctr. NPRM Comments at 2 (citing 17 U.S.C. 1506(a)(1)).

[32] Copyright Alliance et al. NPRM Comments at 7 (''In both instances, we believe that the ability of a library or archives to take advantage of the privilege of a blanket opt-out should be contingent on it properly notifying the Office of these changes.'').

[33] Copyright Alliance et al. NPRM Comments at 6.

[34] *Id.*

[35] The one exception to this rule is for library and archives opt-out elections that are filed before this rule's effective date. These filings will become effective on the rule's effective date. This provision will allow more time for libraries and archives to make an opt-out election far in advance of the date that the CCB commences operations, and addresses the circumstance that the libraries and archives opt-out form will be posted before this rule's effective date.

archives in advance of the CCB beginning operations, and new opt-out elections should be available on the opt-out list as soon as feasible after receipt. Where a prospective claimant is concerned that a library or archives may have submitted an opt-out election that has not yet posted on the CCB's website, that claimant is encouraged to contact the CCB before submitting its claim to inquire whether the entity has submitted a form that has not yet been processed.

If a library or archives intends to opt out of a pending claim and also submit a preemptive opt-out for future claims, it should file both a proceeding-specific opt-out election and a preemptive opt-out election.

C. Transparency and Public Content

The NPRM reflected the Office's agreement with commenters who suggested that ''the list of libraries and archives that have preemptively opted out of participating in CCB proceedings should be made publicly available online.'' [36] Responding to the NPRM, parties commented that this information should be made available as soon as possible after being received.[37] The Niskanen Center further suggested allowing users to view the entire opt-out list or to allow users to search the list ''by state, locality, type of institution (*e.g.* library or archive), and name.'' [38] AALL suggested that the Office include more information ''geared toward potential respondents,'' which would help law librarians and legal information professionals learn about the opt-out provision and their rights and responsibilities with the CCB.[39] AALL also offered ''to collaborate with the Copyright Office on a webinar or other educational programs and resources about the CCB geared toward law librarians and legal information professionals.'' [40]

Although these comments do not require amendments to the proposed rule, the Office can confirm that the initial opt-out list will be posted in Portable Document Format (''PDF''), and will be updated as soon as feasible after receipt and approval of preemptive opt-out requests. While the PDF will be generally searchable, the Office hopes to add additional search functionality in any future technology updates. The Office also confirms that there will be information provided on its website and on the CCB website, when it launches, directed at libraries and archives regarding the availability and impact of the preemptive opt-out. Finally, the Office and CCB welcome collaboration on CCB-related outreach from all interested parties.

D. Application of the Opt-Out Provision to Persons Acting in the Course of Their Employment

The CASE Act is silent on whether a library's or archives' preemptive opt-out election would apply to those entities' employees acting within the scope of their employment. In its NOI, the Office asked whether it ''should include a regulatory provision that specifies that this opt out extends to employees operating in the course of their employment.'' [41] Those representing libraries and archives supported such a rule, while other commenters were opposed. The NPRM as issued did not include a provision to extend a preemptive opt-out election to libraries' or archives' employees.

In initially declining to include such a provision, the Office made two observations. The first was that under agency law, ''[u]nless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment.'' [42] The second observation was that ''the CASE Act expressly offers the preemptive opt-out option to 'a library or archives,' but does not mention employees.'' [43]

Numerous commenters representing libraries or archives responded that the final rule should extend a library's or archives' preemptive opt-out election to cover those entities' employees.[44] The Office received many similar comments from employees of libraries or archives stating that these employees ''would be unable to perform [their] regular daily work for fear of liability if the preemptive opt out does not cover employees.'' [45]

Other comments in support of including a regulatory provision addressing employees broadly made three legal arguments. The first argument responded to the Office's observations regarding agency law and generally asserted that including employees with a library's or archives' opt out is consistent with other principles of agency law or is not inconsistent with agency law.[46] In particular, commenters noted that under agency law, a principal (the library or archives) may delegate a privilege (the preemptive opt-out election) to an agent (their employees).[47] University Information Policy Officers reasoned that, ''[i]f participation in the CASE Act adjudication process is akin to liability, then the opt[-]out provision in the statute is akin to a privilege, and '[m]ost privileges held by a principal may be delegated to an agent.' '' [48] University Information Policy Officers further argued that an agent whom the principal directed to perform an act cannot be held liable if a principal cannot be held liable for performing the act, even if the

[36] 86 FR at 49276 (citing AIPLA Initial NOI Comments at 5; Copyright Alliance et al. Initial NOI Comments at 21; LCA Initial NOI Comments at 2.).

[37] *See* Copyright Alliance et al. NPRM Comments at 8 (''Ideally, the list will be updated immediately upon any changes . . . but, at minimum, the list should be updated biweekly.''); Niskanen Ctr. NPRM Comments at 3 (''The Copyright Office and the Copyright Claims Board should make as available as possible the opportunity to look up which institutions have chosen the blanket opt-out option.'').

[38] Niskanen Ctr. NPRM Comments at 3.

[39] AALL NPRM Comments at 1–2.

[40] *Id.* at 2.

[41] 86 FR at 16161.

[42] 86 FR at 49276.

[43] *Id.*

[44] *See, e.g.,* Ass'n of Am. Univs. NPRM Comments at 1; Ass'n of Southeastern Research Libraries, Greater Western Library All., & Triangle Research Libraries Network (''ASERL, GWLA & TRLN'') NPRM Comments at 1; Univ. Infor. Pol'y Officers NPRM Comments at 2–4; LCA NPRM Comments at 1–3; Univ. of Cal., Berkeley NPRM Comments at 1–3; Harvard Library NPRM Comments at 1–3; Software Preservation Network NPRM Comments at 2; Univ. of Mich. Library NPRM Comments at 1–2; Univ. of N. Tex. Libraries NPRM Comments at 1; Niskanen Ctr. NPRM Comments at 3–4; Cornell Univ. Library NPRM Comments at 1–2; Univ. of N.C., Chapel Hill Univ. Libraries NPRM Comments at 1; Kent State Univ. Libraries NPRM Comments at 1; Duke Univ. Libraries NPRM Comments at 1–2; SPARC NPRM Comments at 1; Univ. of Nebraska NPRM Comments at 1; AALL NPRM Comments at 1; Va. Commonwealth Univ. Libraries NPRM Comments at 1–2; Columbia Univ. Libraries NPRM Comments at 1; UCLA Library NPRM Comments at 1–2; SAA NPRM Comments at 1–2; Univ. of Fla. Smathers Libraries NPRM Comments at 1; *see also* Fight for the Future NPRM Comments. While one commenter voiced their opposition ''to permitting pre-emptive opt-outs by individuals who claim to be employees of websites responsible for uploading infringing material,'' SFWA NPRM Comments at 3–4, it is unclear whether this party is addressing a specific circumstance related to libraries or archives who provide materials online or to libraries' and archives' employees, generally.

[45] *See, e.g.,* Abby Nafziger NPRM Comments at 1. *But see, e.g.,* Abby Adams NPRM Comments at 1 (omitting this claim from an otherwise substantially similar comment).

[46] *See id.* at 1–2 (stating that agency law does not prohibit a principal from taking action on behalf of an agent, so extending the preemptive opt out to employees is not inconsistent with agency law); Ass'n of Am. Univs. NPRM Comments at 1 (stating that the inclusion of employees would be consistent with agency law principles ''[i]n accordance with current law''); Univ. Infor. Pol'y Officers NPRM Comments at 3.

[47] *See* Univ. Infor. Pol'y Officers NPRM Comments at 3; LCA NPRM Comments at 1–2; Univ. of Cal. Libraries NPRM Comments at 2–3; Software Preservation Network NPRM Comments at 2.

[48] Univ. Infor. Pol'y Officers NPRM Comments at 3 (citing 2 Restatement (Third) of Agency at 122).

agent would have been liable absent this privilege.[49]

It is not clear, however, the extent to which the cited agency law principles are applicable here. The preemptive opt-out is not a liability privilege, but rather a privilege to preemptively elect to decline using an optional tribunal to determine a copyright claim, or a ''jurisdictional privilege.'' [50] As the University of California correctly observes, the CASE Act does not ''create[ ] or waive[ ] tort liability by principals or agents.'' [51] Considering the differences between liability privileges and jurisdictional privileges, principles governing the former may not be determinative for the latter.

The second argument made by commenters supporting extending a library's or archives' opt-out election to its employees related to the texts of both the CASE Act and the Copyright Act. Commenters recognized that the libraries' and archives' preemptive opt-out provision does not have any associated legislative history,[52] including in the Office's *Copyright Small Claims* policy report, as it was a late amendment in the legislative process.[53] Therefore, they made legislative intent arguments based on the statutory language itself.

The CASE Act does not define a ''library'' or ''archives'' as including or excluding employees, but applies the preemptive opt-out election to ''any library or archives, respectively, that qualifies for the limitations on exclusive rights under section 108.'' [54] Commenters argued that since section 108's limitations include employees,[55] the CASE Act's libraries and archives opt-out election should also apply to them.[56] It is true that some of section 108's provisions, namely 108(a), (f)(1), and (g), explicitly extend statutory exemptions to a library's or archives' employees, but section 108(h), which exempts enforcement of certain display or performance rights, does not do so.[57] At the same time, the exempted actions described in this subsection cannot occur without the employees of libraries or archives engaging in the described conduct at the direction of their employers. While not conclusive, in light of the above, the treatment of employees in section 108 overall weighs in favor of extending the preemptive opt-out to employees in the CASE Act.

Finally, commenters made related policy arguments that Congress must have intended to include employees, even though the statutory text is not explicit.[58] Many noted that libraries and archives must act through their employees,[59] with the University of Michigan Library suggesting that ''there is no alleged infringement claim against a library that cannot also be brought against a corresponding library employee.'' [60] Other commenters suggested that excluding employees from a library's or archives' preemptive opt-out election would result in those libraries and archives becoming involved in CCB proceedings on behalf of those employees and would effectively ''hollow out the important intentional protections'' for libraries and archives in both the Copyright Act and CASE Act.[61] As the University of North Texas Libraries observed, ''[e]ven in cases where [a claim before the CCB] does not move forward or where an individual chooses to opt out, the employing library will not truly be able to opt out of CCB proceedings when considerable education and support for individual employees is necessary to navigate this process.'' [62] The Niskanen Center argued that it would be ''inconsistent'' with the CASE Act's intent ''to create a situation where an employee's failure to opt-out might result in the library becoming enmeshed in the CCB proceeding on behalf of the employee'' [63] and that this would result in libraries needing to ''monitor [their] employees' receipt of any claims or rely on employees to report claims themselves, a burdensome process with a high risk of potential error.'' [64]

Upon careful evaluation of the statute and the submitted comments, the Office is amending the proposed rule to include a regulatory provision addressing libraries' and archives' employees. The final rule will apply a library's or archives' opt-out election to both the qualifying entity and its employees for activities within the employee's scope of employment. As discussed above, neither the statutory language nor agency law conclusively resolves this issue. The Office therefore looks to the underlying intent and purpose of the CASE Act as a whole for guidance.

As the Office noted in its March 2021 NOI, ''the statute and legislative history make clear that Congress intended for the Office to implement regulations in a manner that 'furthers the goals of the Copyright Claims Board' and establishes an 'efficient, effective, and voluntary' forum for parties to resolve their disputes.'' [65] While excluding employees of a library or archives from the preemptive opt-out would allow employee respondents to make their own independent decisions about participating in a CCB proceeding, commenters have made a persuasive argument that a rule that excluded employees acting within the scope of their employment would be generally inconsistent with the section 108 provisions extending statutory exemptions to a library or archive's employees, and that the absence of a rule extending the library's or archives' opt-out to its employees could create unnecessary complexity, uncertainty, and inefficiency, frustrating Congress's goals in passing the CASE Act. Pursuant to its authority under 17 U.S.C. 702 and 1510(a)(1) and to best reflect the statute's goals in light of the rulemaking record, the Office is adopting final regulations to address the statutory ambiguity with respect to whether the library and archives preemptive opt-out election applies to employees acting within the course of their employment. In doing so, the Office is exercising its plenary regulatory authority to ''develop clear regulations and practices to fairly balance the competing interests of

[49] *See id.* (citing *PYCA Indus., Inc.* v. *Harrison Cty. Waste Water Mgmt. Dist.,* 177 F.3d 351, 378–79 (5th Cir. 1999)).

[50] Univ. of Cal., Berkeley NPRM Comments at 3 (emphasis omitted).

[51] *Id.*

[52] UCLA Library NPRM Comments at 1; Univ. Infor. Pol'y Officers NPRM Comments at 2; Software Preservation Network NPRM Comments at 2.

[53] No earlier copyright small claims bill contained this provision. *See* S. 1273, 116th Cong.; H.R. 2426, 116th Cong.; H.R. 3945, 115th Cong. (2017); H.R. 6496, 114th Cong. (2016).

[54] 17 U.S.C. 1506(aa)(4).

[55] *Id.* at 108(a), (f)(1).

[56] Niskanen Ctr. NPRM Comments at 3–4; Univ. of Cal. Libraries NPRM Comments at 2 n.8.

[57] 17 U.S.C. 108(h).

[58] *See, e.g.,* Univ. Infor. Pol'y Officers NPRM Comments at 2–3; LCA NPRM Comments at 2–3; Univ. of Cal., Berkeley NPRM Comments at 1; Harvard Library NPRM Comments at 2; Software Preservation Network NPRM Comments at 2; Univ. of Minn. Libraries NPRM Comments at 1; Univ. of N. Tex. Libraries NPRM Comments at 1; ASERL, GWLA & TRLN NPRM Comments at 1; Niskanen Ctr. NPRM Comments at 3–4; Cornell Univ. Library NPRM Comments at 1–2; Univ. of N.C., Chapel Hill Univ. Libraries NPRM Comments at 1.

[59] *See, e.g.,* Harvard Library NPRM Comments at 2; Univ. of N. Tex. Libraries NPRM Comments at 1; Univ. of Minn. Libraries NPRM Comments at 2; Kent State Univ. Libraries NPRM Comments at 1; Univ. of Mich. Library NPRM Comments at 1.

[60] Univ. of Mich. Library NPRM Comments at 1.

[61] SPARC NPRM Comments at 1; *see also* Ass'n of Am. Univs. NPRM Comments at 1; Univ. of Mich. Library NPRM Comments at 1; Univ. of Minn. Libraries NPRM Comments at 1; ASERL, GWLA & TRLN NPRM Comments at 1; Univ. of Cal. Libraries NPRM Comments at 1–2.

[62] Univ. of N. Tex. Libraries NPRM Comments at 1.

[63] Niskanen Ctr. NPRM Comments at 4 (quoting LCA Reply NOI Comments at 1).

[64] *Id.*

[65] 86 FR at 16157 (quoting 17 U.S.C. 1510(a)(2)(A) and H.R. Rep. No. 116–252, at 23 (footnotes omitted)).

claimants and respondents,'' as Congress directed.[66]

Without such a rule, a library or archives that decided to preemptively opt-out of CCB proceedings could, by law or practice,[67] be compelled to participate in such a proceeding to defend an employee who did not timely opt out individually. Employees could also be placed in a position where they had to defend employer-directed actions on their own. Further, the practical effect of not including employees in the opt-out election of the library or archives could result in unnecessary costs for copyright owners; for example, infringement claims that would normally be jointly brought against the library or archives and its employee could end up being brought in two venues—federal court and the CCB. The Office concludes that it is more consistent with Congressional intent behind the CASE Act to allow libraries and archives to opt out of CCB proceedings without their employees who acted within the scope of their employment being required to file their own proceeding-specific opt-out elections.

E. Class Action Opt-Out Elections

Finally, the rule clarifies the CCB's ability to resolve conflicts between CCB proceedings and class action cases arising from the same transaction or occurrence in which a party before the CCB is a class member. If a party in an active proceeding ''receives notice of a pending or putative class action, arising out of the same transaction or occurrence'' as the claim at issue before the CCB, the CASE Act requires that party to make an affirmative choice between two options.[68] The party must either ''opt out of the class action, in accordance with regulations established by the Register'' or ''seek dismissal'' of the CCB proceeding in writing.[69] The NPRM proposed a 14-day period for a party to either opt out of the class action and provide notice to the CCB or to seek dismissal of the CCB proceeding.[70] The Office received no comments on this portion of the proposed rule and promulgates it without amendment. The Office realizes that the statute does not state what will happen if the party fails to adhere to its obligation to make a timely election. The Office has therefore added a provision clarifying that the CCB may take necessary corrective action to resolve the conflicting proceedings, which may include dismissal of the proceeding without prejudice or, in circumstances where the class action has reached a determination on the merits, vacating any CCB determination. This provision is consistent with the goal of the statute to ensure the timely resolution of a conflicting proceeding by requiring a party to choose to continue with either the CCB proceeding or the class action. It is also consistent with the CCB's power to control its own proceedings, but not federal court class action proceedings.

List of Subjects in 37 CFR Part 223

Copyright, Claims.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends chapter II, subchapter B, of title 37 Code of Federal Regulations to read as follows:

CHAPTER II—U.S. COPYRIGHT OFFICE, LIBRARY OF CONGRES

SUBCHAPTER B—COPYRIGHT CLAIMS BOARD, LIBRARY OF CONGRESS

■ 1. Under the authority of 17 U.S.C. 702, 1510, the heading for subchapter B is revised to read as set forth above.

■ 2. Part 223 is added to read as follows:

PART 223—OPT-OUT PROVISIONS

Sec.

Authority: 17 U.S.C. 702, 1510.

§ 223.1 [Reserved]

§ 223.2 Libraries and archives opt-out procedures.

(a) *Opt-out notification.* (1) A library or archives that wishes to preemptively opt out of participating in Copyright Claims Board (''Board'') proceedings under 17 U.S.C. 1506(aa) may do so by submitting written notification to the Board. The notification shall include a signed certification under penalty of perjury that the library or archives qualifies for the limitations on exclusive rights under 17 U.S.C. 108 and the signatory is authorized to submit the form on the library's or archives' behalf.

(2) The submission described in paragraph (a)(1) of this section shall list the name and physical address of each library or archives to which the preemptive opt out applies and shall be signed by a person with the authority described in paragraph (c) of this section. The library or archives must also provide a point of contact for future correspondence, including phone number, mailing address, email address, and the website for the library or archives, if available, and shall notify the Board if this information changes.

(3) The Board will accept the facts stated in the submission described in paragraphs (a)(1) and (2) of this section, unless they are implausible or conflict with sources of information that are known to the Board or the general public.

(4) If a Federal court determines that an entity described in paragraph (a)(1) of this section does not qualify for the limitations on exclusive rights under 17 U.S.C. 108, that entity must inform the Board of that determination and submit a copy of the relevant order or opinion, if any, within 14 days after the determination is issued.

(5) An opt-out under this section extends to a library's or archives' employee acting within the scope of their employment, but does not apply to employees acting outside the scope of their employment.

(6) For the purposes of this section, the date that the Board posts the opt-out information on its website as described in paragraph (b) in this section, after receipt, review, and processing of the notification described in paragraph (a)(1) of this section, will be the effective date of a preemptive opt-out election, except as noted in paragraph (a)(9) of this section. A preemptive opt-out election would not compel dismissal of a claim that the Board has found compliant and has instructed the claimant to serve prior to the preemptive opt-out election's effective date. A respondent who wishes to opt out of such a claim should follow the directions provided in the served notice of proceeding.

(7) A library or archives may rescind its preemptive opt-out election under this section, such that it may participate in Board proceedings, by providing written notification to the Board in accordance with such instructions as are provided on the Board's website. A library or archives may submit no more than one such rescission notification per calendar year.

(8) The notification described in paragraph (a)(1) of this section shall be submitted to the Board in accordance

[66] *See Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005) (''[A]mbiguities in the statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'') (citing *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984)).

[67] Kent State University Libraries stated that ''many state institutions, including in the State of Ohio, are legally obligated to represent state employees acting in the scope of their employment.'' Kent State Univ. Libraries NPRM Comments at 1.

[68] 17 U.S.C. 1506(q)(3).

[69] *Id.* at 1507(b)(2), 1506(q)(3).

[70] 86 FR at 49277.

with such instructions as are provided on the Board's website.

(9) A blanket opt-out filed by a library or archives in accordance with this section before April 8, 2022 will become effective on that date.

(b) *Review of eligibility.* (1) The Board will maintain on its website a public list of libraries and archives that have preemptively opted out of Board proceedings pursuant to paragraph (a) of this section. If the Register determines pursuant to paragraph (a)(3) of this section that an entity does not qualify for the preemptive opt-out provision, the Office will communicate to the point of contact described in paragraph (a)(2) of this section that it does not intend to add the entity to the public list, or that it intends to remove the entity from that list, and will allow the entity to provide evidence supporting its qualification for the exemption within 30 days. If the entity fails to respond, or if, after reviewing the entity's response, the Register determines that the entity does not qualify for the limitations on exclusive rights under section 108 of title 17, the entity will not be added to, or will be removed from, the public list. If the Register determines that the entity qualifies for the limitations on exclusive rights under 17 U.S.C. 108, the entity will be added to, or remain on, the libraries and archives preemptive opt-out list. This provision does not limit the Office's ability to request additional information from the point of contact listed pursuant to paragraph (a)(2) of this section. Any determination by the Register regarding an entity's qualifying status for the limitations on exclusive rights under 17 U.S.C. 108 is solely for the purpose of determining whether the entity qualifies for the preemptive opt out under 17 U.S.C. 1506(aa) and does not constitute a legal conclusion for any other purpose.

(2) A claimant seeking to assert a claim under this section against a library or archives, or an employee thereof acting within the scope of their employment, that it believes is improperly included on the public list described in paragraph (b)(1) of this section may file the claim with the Board pursuant to 17 U.S.C. 1506(e) and applicable regulations. The claimant must include in its statement of material facts allegations sufficient to support that belief. If the Board concludes, as part of its review of the claim pursuant to 17 U.S.C. 1506(f), that the claimant has alleged facts sufficient to support the conclusion that the library or archives is ineligible for the preemptive opt-out, and the Register agrees, the library or archives will be given an opportunity to provide evidence supporting its qualification for the exemption pursuant to paragraph (a)(1) of this section. If the Register concludes that evidence submitted by the library or archives supports its qualification for the exemption, the library or archives will remain on the list and the associated allegations by the claimant will be stricken. After these allegations are stricken, if the claim includes other respondents and is otherwise complaint, the claimant will be instructed to proceed with service of the claim against the remaining respondents. Alternatively, if the Register concludes that the library or archives has not provided evidence to support its qualification for the exemption, the library or archives will be removed from the blanket opt-out list. The claim will then be reviewed for compliance and, if found to be compliant, the claimant will be instructed to proceed with service of the claim.

(3) Any determination made under paragraph (b)(1) of this section shall constitute final agency action under 5 U.S.C. 704.

(c) *Authority.* Any person with the authority to take legally binding actions on behalf of a library or archives in connection with litigation may submit a notification under paragraph (a) of this section.

(d) *Multiple libraries and archives in a single submission.* A notification under paragraph (a) of this section may include multiple libraries or archives in the same submission if each library or archives is listed separately in the submission and the submitter has the authority described under paragraph (c) of this section to submit the notification on behalf of all libraries and archives included in the submission.

§ 223.3 Class action opt-out procedures.

(a) *Opt-out or dismissal procedures.* Any party to an active proceeding before the Copyright Claims Board (''Board'') who receives notice of a pending or putative class action, arising out of the same transaction or occurrence as the proceeding before the Board, in which the party is a class member, shall either opt out of the class action or seek written dismissal of the proceeding before Board within 14 days of receiving notice of the pending class action. If a party seeks written dismissal of the proceeding before the Board, upon notice to all claimants and counterclaimants, the Board shall dismiss the proceeding without prejudice.

(b) *Filing requirement.* A copy of the notice indicating a party's intent to opt out of a class action proceeding must be filed with the Board within 14 days after the filing of the notice with the court.

(c) *Timing.* The time periods provided in paragraphs (a) and (b) of this section may be extended by the Board for good cause shown.

(d) *Failure to notify Board.* If a party fails to make a timely election under paragraph (a) of this section, the Board is authorized to take corrective action as it deems necessary, which may include dismissal of a pending claim before the Board with or without prejudice, notifying the class action court of any final determination by the Board, or vacating a final determination of the Board. The Board may, in its discretion, direct a party to show cause why action under paragraph (a) of this section was not taken.

Dated: February 28, 2022.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2022–04747 Filed 3–8–22; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0446; FRL–9398–02–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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a State Implementation Plan (SIP) revision to the Jefferson County portion of the Kentucky SIP submitted by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ) to EPA on August 12, 2020. The SIP 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 portions of the Louisville, KY Area in a separate action. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective April 8, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0446. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the 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. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 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 1, 2015, EPA strengthened the 8-hour ozone NAAQS, lowering the level of the NAAQS from 0.075 parts per million (ppm) to 0.070ppm. *See* 80 FR 65292 (October 26, 2015).[1] 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.[2] *See* 83 FR 25776 (June 4, 2018).

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] the Commonwealth of Kentucky, through KDAQ on behalf of the LMAPCD submitted a SIP revision addressing the emissions statement requirements related to the 2015 8-hour ozone NAAQS for Jefferson County.

EPA is approving the SIP revision as meeting the emissions statement requirement of section 182(a)(3)(B) of the CAA, and meeting EPA's SIP Requirements Rule.[4] More information on EPA's analysis of LMAPCD's August 12, 2020, SIP revision, and how this addresses the above-mentioned requirements, is provided in EPA's notice of proposed rulemaking (NPRM) published on January 13, 2022. *See* 87 FR 2101. EPA received no public comments on the January 13, 2022, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of LMAPCD Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,* Version 10, with the exception of Section 5 and references to Section 5, effective on May 20, 2020. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

III. Final Action

EPA is approving the changes described in the NPRM, *see* 87 FR 2101 (January 13, 2022), which Kentucky submitted in its August 12, 2020, SIP revision to address the emissions statements requirements for the 2015 8-hour Ozone NAAQS for the Jefferson County Area. EPA has determined that the Jefferson County Area emissions statements requirements SIP meets the requirements for the 2015 ozone NAAQS for the Jefferson County Area.

IV. 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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

[1] The 2015 Ozone NAAQS was promulgated on October 1, 2015, published on October 26, 2015, and effective December 28, 2015.

[2] 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.

[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] 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. *See* 83 FR 62998.

[5] *See* 62 FR 27968 (May 22, 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

• 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 28, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart (S)—Kentucky

■ 2. In § 52.920, in paragraph (c), amend table 2 by revising the entry for Regulation ''1.06'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	**Federal Register** notice	District effective date	Explanation
*	*	*	*	*	* *
1.06	Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting.	3/9/2022	[Insert citation of publication].	5/20/2020	Except for Section 5 and any references to Section 5 in this regulation.
*	*	*	*	*	* *

* * * * *

[FR Doc. 2022–04831 Filed 3–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0400; EPA–R04–OAR–2020–0401; FRL–9274–02–R4]

Air Plan Approval; Georgia; Atlanta Area Emissions Inventory and Emissions Statements Requirements for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of State Implementation Plan (SIP) revisions submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) on July 2, 2020, and November 4, 2021, to address the base year emissions inventory requirements and emissions statements requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) for the Atlanta, Georgia 2015 8-hour ozone nonattainment area (hereinafter referred to as the ''Atlanta Area''). These requirements apply to all ozone nonattainment areas in Georgia. These actions are being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective April 8, 2022.

ADDRESSES: EPA has established dockets for these actions under Docket Identification Nos. EPA–R04–OAR–2020–0400 and EPA–R04–OAR–2020–0401. All documents in these dockets are listed on the *www.regulations.gov* website. Although listed in the index for each docket, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the 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. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 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 1, 2015, EPA strengthened the 8-hour ozone NAAQS, lowering the level of the NAAQS from 0.075 parts per million (ppm) to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).[1] Effective August 3, 2018, EPA designated a seven-county area in and around metropolitan Atlanta, consisting of Bartow, Clayton, Cobb, Dekalb, Fulton, Gwinnett, and Henry Counties in Georgia, as a Marginal nonattainment area for the 2015 Ozone NAAQS. *See* 83 FR 25776 (June 4, 2018). Based on the nonattainment designation, Georgia was required to develop a SIP revision addressing certain CAA requirements for the Atlanta Area. The revision must include, among other things, a comprehensive, accurate, current inventory of actual emissions from all emissions sources in the nonattainment area, known as a ''base year inventory,'' pursuant to CAA section 182(a)(1) and emissions statements requirements pursuant to section 182(a)(3)(B). On July 2, 2020, the State of Georgia, through GA EPD, submitted SIP revisions addressing the base year emissions inventory and emissions statements requirements related to the 2015 8-hour ozone NAAQS for the Atlanta Area.[2] Subsequently, Georgia submitted an updated SIP revision on November 4, 2021, further addressing the emissions statements requirements.[3] The SIP revision addressing the emissions statements requirements included modifications to Georgia Rule 391–3–1–.02(6)(a)4.(iii).

On November 26, 2021, and subsequently on December 2, 2021, EPA published Notices of Proposed Rulemaking (NPRMs) proposing to approve the July 2, 2020, SIP revision regarding the base year emissions inventory and the July 2, 2020, and November 4, 2021, SIP revisions regarding the emissions statements requirements for the Atlanta Area for the 2015 8-hour ozone NAAQS. *See* 86 FR 67409 and 86 FR 68449. More information on EPA's analysis of Georgia's July 2, 2020, and November 4, 2021, SIP revisions, and how these SIP revisions address the above-mentioned requirements, are provided in EPA's November 26, 2021, and December 2, 2021, NPRMs. Comments on EPA's November 26, 2021, NPRM were due on December 27, 2021. EPA received two comments on EPA's November 26, 2021, NPRM.[4] EPA's response is provided in Section II, below. Comments on EPA's December 2, 2021, NPRM were due on or before January 3, 2022. No comments were received on EPA's December 2, 2021, NPRM.

While EPA did not receive comments on the December 2, 2021, NPRM, EPA is herein providing non-substantive clarifications on the December 2, 2021, NPRM. First, EPA would like to clarify that EPA received GA EPD's draft SIP submittal in a July 2, 2020, SIP revision. EPA subsequently received GA EPD's draft SIP revision supplementing the original SIP submittal, along with a parallel processing request, on July 1, 2021, through a letter dated June 28, 2021.

Next, EPA notes that the following sentence in the December 2, 2021, NPRM, found in Section II, ''Analysis of State's Submittal,'' in the first full paragraph of the first column on page 68451, should have included Barrow, Carroll, Hall, Spalding, and Walton Counties. These counties were inadvertently omitted from the December 2, 2021, NPRM in the sentence that states: ''Georgia subsequently amended the regulations to, among other things, include Bartow and Newton Counties thereby covering the entire Atlanta Area.'' On November 27, 2009, EPA approved a SIP revision that expanded the applicability of Georgia's emissions statement requirements to include Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton Counties, which are part of the Atlanta 8-hour ozone nonattainment area. *See* 74 FR 62249.

Next, in Section III, ''Incorporation by Reference,'' of the December 2, 2021, NPRM, on page 68451 in the third column in the second sentence, EPA inadvertently did not include a period after the ''4'' when referencing GA EPD's rule 391–3–1–.02(6)(a)4.(iii). Throughout the December 2, 2021, NPRM, the citation ''391–3–1–.02(6)(a)4(iii)'' should have been ''391–3–1–.02(6)(a)4.(iii)'' everywhere it appears.

Lastly, EPA notes a typographical error in the November 26, 2021, NPRM. Specifically, in Section III, ''Analysis of State's Submittal,'' of the November 26, 2021, NPRM on page 67411, the NPRM states (emphasis added): ''Georgia obtained emissions for the non-road mobile sources from the 2014 NEI. Those emissions were estimated using EPA's *National Mobile Inventory Model (NMIM) with updated NMIM County Database (NCD) files* from GA EPD. A detailed account of non-road mobile sources can be found in Appendix D of the July 2, 2020, submittal.'' Instead of referencing ''EPA's National Mobile Inventory Model (NMIM) with updated NMIM County Database (NCD) files,'' EPA should have referenced EPA's Motor Vehicle Emission Simulator (MOVES) model, and the above sentences should have read (emphasis added), ''Georgia obtained emissions for the non-road mobile sources from the 2014 NEI. Those emissions were estimated using EPA's *Motor Vehicle Emission Simulator (MOVES) model* for each ozone nonattainment county. A detailed account of non-road mobile sources can be found in Appendix D of the July 2, 2020, submittal.''

II. Response to Comments

As mentioned above, on November 30, 2021, EPA received two comments on the November 26, 2021, NPRM. These two comments are duplicative, so EPA is responding to them as one comment. EPA's comment summary and response are provided below.

Comment: The commenter suggested that EPA's November 26, 2021, NPRM is EPA's method of combating and regulating ozone ''by releasing ozone in

[1] The 2015 Ozone NAAQS was promulgated on October 1, 2015, published on October 26, 2015, and effective December 28, 2015.

[2] On July 2, 2020, GA EPD also submitted a SIP revision providing a certification that existing SIP-approved Georgia rules satisfy the permit program requirements found in section 172(c)(5) of the CAA. EPA acted on this SIP revision in a separate rulemaking. *See* 87 FR 3677 (January 25, 2022).

[3] On November 4, 2021, GA EPD also submitted a SIP revision with changes to Rule 391–3–1–.02(2)(rr), ''Gasoline Dispensing Facility—Stage I''. EPA will act on that SIP revision in a separate rulemaking.

[4] EPA received two anonymous comments, which displayed the same email address, on the November 26, 2021, NPRM. Although EPA received these comments separately, the contents of these comments are duplicative in nature. In the ''Response to Comments'' section below, EPA's ''Response'' addresses both comments received on November 30, 2021. These comments are available in Docket No. EPA–R04–OAR–2020–0400.

Georgia.'' The commenter notes that ''the source'' provides a lot of detail/information but expressed curiosity as to how the regulation of ozone in Georgia would be executed and whether it would cause significant changes in the State's air quality.

Response: EPA finds the comments somewhat unclear. The rationale for EPA's proposed action regarding Georgia's emissions inventory is explained in the November 26, 2021, NPRM which includes an explanation concerning the purpose of the emissions inventory for the Atlanta Area. In the November 26, 2021, NPRM, EPA proposed approval of Georgia's SIP revision to address the base year emissions inventory requirements for the Atlanta Area. CAA section 182(a)(1) requires ozone nonattainment areas classified as Marginal or above to submit a comprehensive, accurate, current inventory of actual emissions from all sources of nitrogen oxide (NO_X) and volatile organic compounds (VOC) in the nonattainment area. Contrary to what the comments may be implying, EPA approval of this inventory does not result in ''releasing ozone'' or ozone precursors such as VOC or NO_x. Further, EPA approval of the inventory does not impose any regulations on any sources. EPA is now determining that the July 2, 2020, SIP revision meets the requirements of CAA section 182(a)(1). CAA section 182(a)(1) and corresponding federal regulations cited in the NPRM outline the emissions inventory requirements for areas designated as nonattainment for the 2015 8-hour ozone NAAQS.

EPA is unclear on how the commenter intended to use the term ''source.'' If the commenter's reference to ''the source'' means sources that emit VOC and/or NO_X within the Atlanta Area, EPA agrees that the July 2, 2020, submittal included sufficient emissions information from sources within the Atlanta Area that emit NO_X and VOC. If, instead, the commenter's reference to ''the source'' means the NPRM, EPA agrees that the NPRM included sufficient information about EPA's action.

Regarding the commenter's question related to the execution of regulating ozone in Georgia, the ozone standards are applied, or implemented, by controlling air pollution from emission sources. The CAA requires EPA to set NAAQS for certain pollutants, including ozone, that are considered harmful to public health and the environment and come from numerous and diverse sources. States are required under CAA section 110(a) to submit infrastructure SIPs that implement, maintain, and enforce new or revised NAAQS within three years of EPA issuing the standard (or such shorter period as the EPA Administrator may prescribe). Furthermore, each state that contains all or part of an ozone nonattainment area is required to submit a SIP revision addressing the requirements of CAA sections 172 and 182. In general, the SIP consists of programs, including air quality monitoring, air quality modeling, emission inventories, emission control strategies, and documents (policies and rules) that the state uses to attain and maintain the NAAQS. For further information on how Georgia regulates in accordance with the CAA's requirements for the ozone standards, please see several ozone regulations in the Georgia SIP online at *https://www.epa.gov/sips-ga/epa-approved-nonregulatory-provisions-and-quasi-regulatory-measures-georgia-sip.*

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia Rule 391–3–1–.02(6), *Source Monitoring,* Paragraph (a)4., *Emission Statements,* state effective on October 25, 2021. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

IV. Final Actions

EPA is approving the aforementioned SIP revisions submitted by Georgia on July 2, 2020, and November 4, 2021, addressing the base year emissions inventory and the emissions statements requirements for the 2015 8-hour Ozone NAAQS for the Atlanta Area. EPA has determined that the Atlanta Area base year emissions inventory and the emissions statements requirements SIP revisions meet the requirements for the 2015 ozone NAAQS for the Atlanta Area.

[5] *See* 62 FR 27968 (May 22, 1997).

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 that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are not ''major rules'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule(s) or action(s). These actions may not be challenged later in proceedings to enforce their requirements. *See* section 307(b)(2).

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.

Dated: February 28, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart (L)—Georgia

■ 2. In § 52.570:

■ a. In paragraph (c), amend the table by revising the entry for ''391–3–1-.02(6)''; and

■ b. In paragraph (e), amend the table by adding an entry for ''Atlanta Area Base Year Emissions Inventory for the 2015 Ozone NAAQS'' at the end of the table.

The revision and addition read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA Approved Georgia Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
391–3–1–.02(6)	Source Monitoring	8/1/2013	7/28/2017, 82 FR 35108.	Except paragraph (a)4., approved on 3/9/2022, with a State effective date of 10/25/2021.
*	*	*	*	* * *

* * * * *

(e) * * *

EPA Approved Georgia Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
*	*	*	*	*
Atlanta Area Base Year Emissions Inventory for the 2015 Ozone NAAQS.	Bartow, Clayton, Cobb, Dekalb, Fulton, Gwinnett, and Henry Counties.	7/2/2020	3/9/2022, [Insert citation of publication].	

* * * * *

[FR Doc. 2022–04938 Filed 3–8–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0688; FRL–5909.1–02–OAR]

RIN 2060–AV03

National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Combustion Turbines. This final action removes the stay of the effectiveness of the standards for new lean premix and diffusion flame gas-fired turbines that was promulgated in 2004.

DATES: The final rule is effective on March 9, 2022.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0688. All documents in the docket are listed in on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *https://www.regulations.gov.* 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: For questions about this action, contact Melanie King, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; and email address: *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action include industries using stationary combustion turbines, such as: Electric power generation, transmission, or distribution; Pipeline transportation of natural gas; and Crude petroleum and natural gas extraction (North American Industry Classification System Codes 2211, 486210, 211120, 211130). This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the rule. If you have any questions regarding the applicability of any aspect of this action, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/stationary-combustion-turbines-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by May 9, 2022. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. That section of the CAA also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background and Final Amendments

The Stationary Combustion Turbine NESHAP, found at 40 CFR part 63, subpart YYYY, was originally promulgated in 2004 (69 FR 10512; March 5, 2004). The following eight subcategories of stationary combustion turbines were defined in the rulemaking: (1) Emergency stationary combustion turbines, (2) stationary combustion turbines which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or where gasified municipal solid waste is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis, (3) stationary combustion turbines of less than 1 megawatt rated peak power output, (4) stationary lean premix combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than an aggregate total of 1,000 hours annually (also referred to herein as ''lean premix gas-fired turbines''), (5) stationary lean premix combustion turbines when firing oil at sites where all turbines fire oil more than an aggregate total of 1,000 hours annually (also referred to herein as ''lean premix oil-fired turbines''), (6) stationary diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than an aggregate total of 1,000 hours annually (also referred to herein as ''diffusion flame gas-fired turbines''), (7) stationary diffusion flame combustion turbines when firing oil at sites where all turbines fire oil more than an aggregate total of 1,000 hours annually (also referred to herein as ''diffusion flame oil-fired turbines''), and (8) stationary combustion turbines operated on the North Slope of Alaska (defined as the area north of the Arctic Circle (latitude 66.5° North)). The NESHAP requires new or reconstructed stationary combustion turbines in the lean premix gas-fired, lean premix oil-fired, diffusion flame gas-fired, and diffusion flame oil-fired subcategories to meet a formaldehyde limit of 91 parts per billion by volume, dry basis (ppbvd) at 15 percent oxygen (O_2). Compliance is demonstrated through initial and annual performance testing and continuous monitoring of operating parameters.

During the original Stationary Combustion Turbine NESHAP rulemaking, the EPA received a petition from the Gas Turbine Association in August 2002 to create and delist two subcategories of stationary combustion turbines under CAA section 112(c)(9). The subcategories that were called for in the petition were lean premix combustion turbines firing natural gas with limited oil backup and a low-risk combustion turbine subcategory where facilities would make site-specific demonstrations regarding risk levels. Additional information supporting the petition was provided in February 2003. On April 7, 2004, the EPA proposed to delist lean premix gas-fired turbines as well as three additional subcategories of turbines that were determined to meet the criteria for delisting in CAA section 112(c)(9)(B): Diffusion flame gas-fired, emergency, and turbines located on the North Slope of Alaska (69 FR 18327; April 7, 2004). At the same time, the EPA proposed to stay the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines to ''avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.'' (69 FR 18338; April 7, 2004) The standards for new oil-fired turbines were not stayed and have been in effect. On August 18, 2004, the EPA finalized the stay of the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines, pending the outcome of the proposed delisting (69 FR 51184; August 18, 2004). The EPA stated that it would lift the stay if the subcategories were not ultimately delisted, and that turbines constructed or reconstructed after January 14, 2003, would then be subject to the final standards. The EPA also explained that those turbines would be given the same time to demonstrate compliance as they would have if there had been no stay.

The proposal to delist the four subcategories was never finalized in light of the 2007 decision in *NRDC* v. *EPA,* 489 F.3d 1364 (D.C. Cir. 2007), which addressed limits on the EPA's ability to delist subcategories.[1] In the 2019 proposed residual risk and technology review (RTR) for the Stationary Combustion Turbine NESHAP, the residual risk analysis did not support a conclusion that the entire Stationary Combustion Turbines source category met the criteria for delisting in CAA section 112(c)(9)(B). The results of the inhalation risk assessment for the proposed RTR suggested that the maximum individual cancer risk for the source category was above 1-in-1 million. Consequently, the EPA proposed to remove the stay of the standards for new lean premix and diffusion flame gas-fired turbines (84 FR 15046; April 12, 2019).

When the RTR was finalized on March 9, 2020, (85 FR 13525), the EPA did not finalize the removal of the stay to allow for additional time to review the public comments on the proposed removal of the stay, as well as to provide time to review information in a new petition that was submitted in August 2019 to delist the entire Stationary Combustion Turbines source category. In 2004, the EPA had determined that a stay was appropriate while the Agency solicited comment on a proposed subcategory delisting to avoid unwarranted expenditures on installation of emission controls which would not have been required if the subcategories were delisted. In the 2020 final RTR, the Agency determined that it would be reasonable to delay taking final action on the proposal to lift the stay for the same reasons in light of the new petition. However, the EPA has concluded that the new petition to delist the source category does not warrant any further delay in lifting the stay in light of the current status of the EPA's evaluation of the delisting petition. The EPA has not yet completed its evaluation of the petition or determined whether the petition is complete. If the EPA determines that the petition is complete, the Agency will then, on the basis of the Agency's analysis and the Administrator's discretion, either propose to grant the petition and request further public input or take final action to deny the petition. If a proposal to grant the petition is issued, a subsequent rulemaking would be required to finalize the delisting. Consequently, final action on the source category delisting is not likely to be made in the near term. Therefore, the EPA does not believe it is appropriate to continue to retain the stay. In addition, the Agency has evaluated its authority for the stay in light of recent caselaw concerning stays issued under the authority of the CAA and the Administrative Procedure Act (APA), and has been unable to identify any authority for the stay in either statute. In light of the issues concerning the legality of the 2004 stay and the uncertainty concerning the timing and outcome of the EPA's final decision on

[1] The court held in *NRDC* v. *EPA* that the EPA had no authority to create and delist a ''low-risk subcategory'' under CAA section 112(c)(9)(B)(i). 489 F.3d at 1372. According to the court, only subcategories with no carcinogenic HAP emissions and satisfying CAA section 112(c)(9)(B)(ii) could be removed from the CAA section 112(c)(1) list of categories and subcategories (*e.g.,* deletion of the non-mercury cell chlorine production subcategory, 68 FR 70947, December 19, 2003). Otherwise, subcategories with any carcinogenic HAP emissions could only be removed as part of a complete removal of the entire source category under CAA section 112(c)(9)(B)(i), noting that the criteria in CAA section 112(c)(9)(B)(ii) would also need to be satisfied if applicable.

the delisting petition, the EPA is taking final action now to remove the stay of the standards for new lean premix and diffusion flame gas-fired turbines.

III. Public Comments and Responses

This section presents a summary of the public comments received on the proposal to lift the stay of the standards for new lean premix and diffusion flame gas-fired turbines. The EPA received 21 public comments on the proposal to the lift the stay. All comments are contained in the docket for this action. The summary of comments on other elements of the 2019 proposal and the EPA's responses can be found in the docket at Document ID No. EPA–HQ–OAR–2017–0688–0139.

Comment: Some commenters supported the EPA's proposal to lift the stay for lean premix and diffusion flame gas-fired turbines, agreeing with the EPA's rationale for proposing to lift the stay and questioning the EPA's authority to continue the stay.

Response: The EPA acknowledges the comments supporting the removal of the stay. The EPA is removing the stay in this final action and thus no response is required for these comments.

Comment: Several commenters stated that the EPA is under no obligation to lift the stay as part of the RTR rulemaking. One commenter stated that, based on the EPA's original rationale for the stay as well as practical and technological considerations, the EPA should not take any action that would make emission limitations effective upon the date of a final rule addressing other affected units and the RTR provisions of the proposal. Commenters further cited the findings of the EPA's and the delisting petitioners' risk analyses to support addressing the stay in a separate rulemaking. Commenters noted that there is no court-ordered deadline to lift the stay, and they further noted there is no statutory provision mandating that every issue related to a source category be resolved at the same time as an RTR rulemaking. Commenters stated that it is within the EPA's discretion to address environmental agendas piece by piece in separate rulemakings, particularly if the pieces can be implemented independently from one another. The commenters stated that lifting the stay is not necessary for the EPA to finalize the proposed revisions resulting from the RTR and the SSM exemption removal. The commenters noted that the EPA has previously severed portions of proposed rulemakings that require further deliberation and analysis into separate final actions; one commenter cited the state implementation plans (SIP) for Delaware and New Mexico as examples.

Response: The EPA did not finalize the proposal to lift the stay or take action to make the stayed standards effective when the final RTR was promulgated on March 9, 2020 (85 FR 13524). The EPA indicated in the **Federal Register** document for the final RTR that the Agency was not finalizing the proposed removal of the stay to allow for additional time to review the public comments on the proposed removal of the stay, and to review a new petition to delist the Stationary Combustion Turbines source category. Thus, comments urging the EPA not to remove the stay in conjunction with the RTR are moot.

Comment: One commenter stated that, based on a review of the documents in the public record associated with this proposal, it appears that the EPA may have intended to solely address the results of the RTR and not to propose to alter the status of the existing stay, but it is not clear. Commenters noted that the EPA proposed to amend 40 CFR 63.6095(d) by deleting the language about the stay for natural gas-fired turbines, and the preamble stated that the EPA was proposing to remove the stay of the effectiveness of the standards for new lean premix and diffusion flame gas-fired turbines. However, the commenter asserted that the supporting statement indicated that the EPA assumed that the proposed lifting of the stay will be finalized by Year 2 and did not include Year 1 notification, testing, monitoring, recordkeeping, and reporting costs for units that would be impacted by the lifting of the stay. In addition, the commenter noted that proposed 40 CFR 63.6110 referenced ''the date the stay . . . is removed from this subpart'' rather than the date that the proposed rule is finalized. The commenter suggested that the EPA should clarify its intent regarding the status of the stay and stated that the stay should remain in effect and be addressed, if necessary, through separate rulemaking action.

Response: The preamble to the proposed rule clearly indicated that the EPA was proposing to remove the stay. The proposed amendments to the regulatory text also clearly removed the stay provision from the rule. The proposed amendments to 40 CFR 60.4110 were written in the manner noted by commenter in the event that the removal of the stay was finalized on a different timeline than the other proposed amendments. The supporting statement for the original 2004 rule accounted for the notification, testing, monitoring, recordkeeping, and reporting costs and thus such costs were not counted again in the 2019 proposed rule.

Comment: Other commenters raised cost and risk issues in arguing that the EPA should not finalize the proposal to lift the stay for lean premix and diffusion flame gas-fired turbines. One commenter asserted that the EPA has discretion to continue the stay to address broader statutory purposes. One commenter suggested that, in light of the fact that the EPA has proposed not to increase the stringency of the rule for the entire source category, the EPA may consider acting to avoid the imposition of standards with which it may be technically or practically impossible to comply either immediately or within 180 days.

Two commenters stated that lifting the stay would cause significant control installation, testing, and compliance costs for hundreds of estimated affected turbines. One commenter asserted that these costs are unwarranted based on the conclusions the EPA reached as part of its residual risk review, and another commenter agreed that the low risk results suggest that lifting the stay is not necessary. Similarly, a commenter stated that the annual performance testing requirement would impose large testing costs on a subcategory that was initially considered by the EPA to warrant potential delisting and that the costs would be passed on to their customers. A commenter also suggested that the EPA should assess whether these standards are necessary, given the fact that the RTR determined that stationary combustion turbines are not adversely impacting public health or the environment.

Similarly, one commenter stated that the stay was granted on the basis of the EPA's worst-case exposure scenario, so owners/operators of these turbines could reasonably assume that new or reconstructed lean premix gas-fired turbines were highly unlikely to present a health risk even if their formaldehyde emissions were above 91 ppbvd. The commenter noted that no new information has been introduced in the 15 years since the stay was issued to undercut this health-risk assessment. The commenter acknowledged that lifting the stay is necessary because the EPA cannot delist subcategories, but that does not invalidate the health-risk assessment on which the decision to grant the stay was based. The stay has been in place for 15 years, 12 of those since the court decision invalidating delisting of subcategories. The commenter suggested that in light of the low risk and the fact that the EPA is not proposing more stringent emission

limits as a result of the technology review, the EPA should consider setting different standards that do not require immediate compliance.

One commenter also expressed concern about the cost associated with lifting the stay. According to the commenter, the EPA underestimated the cost to comply with the rule for the first year after the final rule. The commenter cited a vendor quote of greater than $2 million to design and install oxidation catalyst control technology for a single simple cycle turbine and depending on the number of turbines that would need to install controls, the cost could be several hundreds of millions, if not billions, of dollars. According to the commenter, the cost could have a real effect on rates paid by electric consumers, given that simple cycle turbines are generally dispatched only at peak hours or to relieve a constraint and thus are often called on during out of order dispatch conditions. The commenter stated that adding the oxidation catalyst costs to the turbine's overall costs mix will likely increase the price at which these units bid into the market, and under economic dispatch, these higher prices could set the market price in peak or constraint conditions and potentially impact grid reliability.

Response: With respect to comments regarding the costs that would be incurred to comply with the stayed standards and the commenters' assertion that such costs are not justified because emissions from the sources are low risk, the EPA did not propose to change or solicit comment on the emission standards or testing requirements, or the costs of the original 2004 rule; therefore, comments on those aspects of the rule are outside the scope of the proposal. Further, the EPA notes that the standards that were stayed were established pursuant to CAA section 112(d)(2) and (3). Standards set under these provisions of CAA section 112 must reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the maximum achievable control technology (MACT). CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The standards that are stayed are MACT floor standards and the EPA cannot establish a standard that is less stringent than the MACT floor based on cost or risk. Further, as is explained in more detail below, even assuming for the sake of argument that commenters are correct that the EPA has discretion to continue the stay or has no legal obligation to remove the stay, the EPA's view is that it is appropriate to lift the stay at this time despite a pending petition to delist the entire source category and in light of issues concerning EPA authority for issuance of the stay in 2004.

Comment: Numerous commenters stated that the EPA should postpone lifting the stay for new lean premix and diffusion flame gas-fired turbines until a decision is made on the forthcoming petition to delist the entire source category under CAA section 112(c)(9). Commenters stated that the petitioners are submitting new information that suggests the maximum lifetime individual cancer risk for this source category is less than 1-in-1 million and that the HQ is less than 1. Commenters contend that these results show that the risk from this source category meets the thresholds for delisting. A commenter noted that it appears that the EPA intended to propose a separate rule to remove the stay at a later date and stated that leaving the existing stay in place pending an evaluation of the new study and a response to any associated delisting petition is reasonable and appropriate.

One commenter noted that the EPA's rationale for the stay was that it would be ''inappropriate and contrary to statutory intent'' to require sources to incur costs for installation and testing of controls until a decision was made on whether the sources should be delisted (69 FR 51185; August 18, 2004). At the time the EPA adopted the stay, the commenter noted that the EPA likely believed it would take final action on the initial delisting petition within a short time, suggesting that the EPA's concern was based on wasteful costs being imposed on a relatively small number of turbines. The commenter asserted that the rationale for the original stay applies now as well, given the new petition, and because the stay has been in place for 15 years, the costs associated with lifting it would be significantly higher than the costs that were avoided by the issuance of the stay. Similarly, two commenters stated that it would be inappropriate to lift the stay now and require sources to take steps and incur significant costs to comply with standards that may only apply for a short period of time and may be eliminated once the petition is evaluated.

Response: As explained in the proposed and final RTR rule, in 2004, the EPA put into place a stay of the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines, pending the outcome of a 2004 proposed delisting. The EPA stated that it would lift the stay if the subcategories were not ultimately delisted, and turbines constructed or reconstructed after January 14, 2003, would then be subject to the final standards. As explained above, the proposal to delist the four subcategories was never finalized in light of the 2007 decision in *NRDC* v. *EPA* which addressed limits on the EPA's ability to delist subcategories.

Commenters contend that the EPA should postpone lifting the stay for new lean premix and diffusion flame gas-fired turbines until a decision is made on the petition to delist the entire source category. The petition to delist that commenters refer to was submitted to the Agency on August 28, 2019, with supplemental information provided as recently as March 2021. As discussed previously in section II of this preamble, final action on the source category delisting is not likely to be made in the near term. Although the EPA determined that a stay was appropriate in 2004 to avoid unwarranted expenditures on installation of emission controls which would not be required if the subcategories were delisted, and in the 2020 final RTR, the Agency determined that it would be reasonable to delay taking final action on the proposal to lift the stay for the same reasons in light of the new petition to delist the turbine category, the EPA has since re-evaluated its authority for the stay in light of recent caselaw concerning CAA and APA stays and has been unable to identify any authority for the stay in either the CAA or APA. Further, the commenters did not identify any such authority. In light of the issues concerning the legality of the 2004 stay and the uncertainty concerning the timing and outcome of the EPA's final decision on the delisting petition explained above, the EPA is taking final action now to lift the stay. In making this determination, the EPA recognizes the potential costs to industry that may be associated with the installation of controls but has determined that the concerns associated with allowing that stay to remain in place outweigh these considerations. The EPA does not believe that it would be appropriate to continue to allow the estimated approximately 250 new gas-fired stationary combustion turbines that have been installed at major sources of HAP since 2003 to operate without emission standards that are required

under the CAA. Moreover, risk and cost considerations are not relevant to the issue of the EPA's authority for the stay. Further, the EPA notes that owners and operators of the turbines have been on notice that the stay might be removed from the rule since at least April 2019 when the Agency proposed to remove the stay. In addition, as explained above, the 2004 final stay document explained that the EPA would lift the stay if the subcategories were not ultimately delisted, and that turbines constructed or reconstructed after January 14, 2003, would then be subject to the final standards. The 2007 court decision in *NRDC* made clear that the EPA could not move forward with the 2004 delisting proposal and that decision put turbine owners and operators on notice that the stay was at risk.

Comment: Several commenters stated that when the EPA established the 91 parts per billion by volume, dry basis (ppbvd) formaldehyde emission limit in 2004, it acknowledged that the standard was based on limited data and might require revision. The commenters stated that the stay of the standards should remain in place until the EPA completes that review and determines whether the standard should be revised.

Two commenters noted that at the time the emission limit was established, the EPA stated in the preamble to the final rule that ''[i]f actual emission data demonstrate that we are incorrect, and that sources which properly install and operate an oxidation catalyst cannot consistently achieve compliance, we will revise the standard accordingly'' (69 FR 10512; March 5, 2004). One commenter stated that at that time, California Air Resources Board (CARB) Method 430 [2] could only detect formaldehyde down to 200–300 ppbvd; but, even today, only the most recent technologies can measure formaldehyde below 100 ppbvd (and the commenter cited an EPRI document describing the accuracy of those technologies as ''uncertain''). The commenter stated that sources will need to perform baseline testing to determine whether they can comply with a 91 ppbvd emission limit, and without that test data, the commenter asserted that the EPA does not have the data to determine whether the standard is achievable. The commenter stated that the EPA should delay lifting the stay to allow sufficient time for companies that already have installed oxidation catalysts to complete their testing with the more accurate methodologies now available. If compliance with the limit is an issue, the commenter suggested that the EPA should revisit the standard, as anticipated in the 2004 rule. Similarly, a commenter requested that the EPA revisit its determination of the standard to ensure 91 ppbvd is achievable in light of the operating records that may now be available.

Two commenters provided more specific suggestions for changing the format of the standard. One commenter suggested that the EPA include the subcategory of new lean premix and diffusion flame gas fired turbines in the list of ''subcategories with limited requirements'' under 40 CFR 63.6090(b). The commenter stated that because risks from this subcategory were low enough to consider delisting, imposing any limits on this subcategory is unnecessary and would result in wasteful and unwarranted expenditure, and these units should only be subject to initial notification. If the EPA determines that a standard is necessary, the other commenter suggested that the EPA consider either an equipment standard or a work practice standard, pursuant to CAA section 112(h). The commenters stated that limitations in the formaldehyde measurement methods may mean that measurement is not practicable due to technological limitations, so the EPA should consider setting a standard under CAA section 112(h)(2)(B). The commenter's suggested equipment standard would require compliance to be demonstrated by documenting equipment performance, similar to the requirements to verify catalyst performance with periodic portable analyzer tests of CO in the Reciprocating Internal Combustion Engines (RICE) NESHAP (40 CFR part 63, subpart ZZZZ). The commenters suggested that an appropriate work practice standard might include demonstrating compliance for low emitting natural gas-fired units by completing periodic burner tune-ups, analogous to the approach specified for natural gas-fired units in 40 CFR part 63, subpart DDDDD (Boiler NESHAP).

Response: The EPA did not propose to change or solicit comment on the emission standards and therefore comments on those aspects of the rule are outside the scope of the proposal. The EPA notes, however, that it did not finalize the April 12, 2019 proposal to lift the stay when it promulgated the final RTR on March 9, 2020, and so the delay that commenters requested has occurred and sources have had nearly 3 years to conduct and provide to the EPA any baseline testing to determine if there are compliance issues. Further, the formaldehyde emissions data obtained during the original Stationary Combustion Turbine NESHAP rulemaking—as well as during the recent RTR rulemaking—demonstrate that stationary combustion turbines are able to meet the 91 ppbvd formaldehyde emission standard. Moreover, these data demonstrate that the available test methods are able to accurately measure formaldehyde at levels below 91 ppbvd. See for example the data summarized in the memo ''Review of the Acute Multiplier Used to Derive Hourly Emission Rates for the Stationary Combustion Turbines Risk Analysis'' (Document ID No. EPA–HQ–OAR–2017–0688–0070). The commenters did not provide any information to show that the limit of 91 ppbvd was unachievable.

With respect to the suggestion that the EPA impose only initial notification requirements on new lean premix and diffusion flame gas fired turbines because risks from these subcategories are low, as noted above, it would not be appropriate to eliminate MACT floor emision limits based on risk.

Regarding the comments that the EPA should consider a work practice or equipment standard under CAA section 112(h), commenters did not provide any information to suggest that the criteria for establishment of a work practice standard apply (*e.g.,* that the pollutant cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations). In fact, as noted above, emissions data show that emissions at or below the standard can be measured. Therefore, there does not appear to be a justification for a work practice or equipment standard.

Comment: Many commenters stated that if the EPA does finalize lifting the stay, 180 days is not long enough for owners and operators to conduct all the activities that will be needed for their turbines to come into compliance with the standards. For various reasons, most of the commenters suggested that 3 years, consistent with the period of time allowed in the CAA for existing sources to comply with NESHAP, would be appropriate. One commenter noted that this compliance date should apply for turbines that commenced construction or reconstruction after January 14, 2003, but before April 12, 2019 (the proposal date of the amendment to lift the stay). Commenters also stated that the EPA

[2] CARB Method 430 is a test method used to measure emissions of formaldehyde and acetaldehyde from stationary sources. *https://www.arb.ca.gov/testmeth/vol3/m_430.pdf.*

should make clear that facilities would have the option to petition for another year to meet the standards if installation of controls is required, per the CAA. Other compliance deadlines that were suggested included from 18 months up to 25 months after the effective date of the removal of the stay.

Commenters stated that the EPA has provided for extensions of compliance deadlines in prior rulemakings. Commenters stated that, as an example, the EPA promulgated an interim final rule in 2014 to extend all Cross-State Air Pollution Rule (CSAPR) compliance deadlines by 3 years to ''provide parties with sufficient time to prepare for implementation, and avoid unnecessary regulatory burden'' (79 FR 71666; December 3, 2014) after the judicial stay of the CSAPR was lifted by the D.C. Circuit. A commenter provided the additional example of the EPA's final rule requiring multiple states and the District of Columbia to submit SIPs to address the regional transport of ground-level ozone (commonly known as the ''NO_X SIP Call'') in 1998, for which it extended the proposed compliance deadline by 8 months, recognizing the utility sector's concern that there were not enough trained workers, engineering services, or materials and equipment to install the NO_X control technology by the initially proposed deadline (63 FR 57356; October 27, 1998).

One commenter stated that when the stay was originally issued, the EPA recognized that many facilities would need to install controls (*e.g.,* oxidation catalyst) to meet the emission limit. In issuing the final stay, commenters noted that the EPA indicated that if the subcategories were not delisted, the stay would be lifted, and all sources in the stayed subcategories would then be subject to the final standards. Commenters further referenced the EPA's statement that ''[t]he sources will then be given the same time to make the requisite demonstration of compliance they would have had if there had been no stay'' (69 FR 51185; August 18, 2004). A commenter stated that some companies expressed concern about the timing at that time, but due to the expectation that turbines would be delisted, facilities were not then harmed by the statement and therefore would have likely been unable to litigate the issue.

One commenter further noted that it is unlikely that any party could file a petition for review of the existing stay now, given that the EPA promulgated the stay in 2004 and is not under any court order to lift the stay at this time. Commenters asserted that the 2004 language regarding the timing of compliance after the potential lifting of the stay is reasonably interpreted to provide for adequate time to install the controls, especially given that the EPA indicated that one of the main reasons for staying the rule was to avoid capital expenditures that ultimately would not be required if the delisting was completed. Thus, the commenters asserted that sources legitimately relied on these statements and reasonably expected that the EPA would not lift the stay in a manner that would deprive them of the needed time to install controls that the EPA intended to be deferred by issuing the stay. As a result, commenters stated that during the time the stay has been in place, many turbines have been constructed without oxidation catalysts. A commenter noted that by the EPA's own estimates, the number of such turbines is almost 200. The commenters asserted that these units have been effectively operating as ''existing'' units under the CAA.

According to the commenters, now that the EPA has proposed to lift the stay, owners and operators are beginning to develop performance test plans to determine the existing formaldehyde concentration from the turbine exhaust stack during different operating conditions. Commenters stated that sufficient time would be needed for owners and operators to find available testing contractors to perform baseline performance testing for all the affected units. One commenter estimated that this step would take 6 months, and another commenter estimated 1 to 3 months. Several commenters stated that there is limited availability of testing contractors that can perform the necessary Fourier-transform infrared (FTIR) spectroscopy testing; one commenter stated that it appears fewer than five vendors in the country can provide testing with detection levels below 91 ppbvd. Therefore, some commenters stated that performance testing could take up to 1 year, and other commenters stated it would likely take longer than the 180 days provided in the proposal. In addition, one commenter noted that the General Provisions of 40 CFR part 63 require a 60-day notice to the EPA before a performance test that must be taken into account when scheduling the testing. One commenter noted that performance testing could be conducted using an alternative method, but owners and operators could not use the results as the test to demonstrate initial compliance without the EPA's approval prior to the test.

Several commenters also stated that even if compliance can be achieved without an oxidation catalyst, the owner or operator must either determine the appropriate operating parameter(s) for compliance monitoring and petition the Administrator for approval of site-specific operating limitations or petition the Administrator for approval of no additional operation limitations. The commenters asserted that developing the information to support a petition, submitting the petition, receiving approval for the petition, and scheduling and conducting the initial performance test cannot be accomplished within 180 days. Two commenters stated that this petition process has been used rarely, if ever, so the EPA's ability and resources to respond to these petitions is largely untested. A commenter further stated that, even if petitions are submitted for a relatively small portion of the affected sources, the number of applications that the EPA is likely to receive could overwhelm the Agency's ability to provide timely responses (*i.e.,* within 60 days). A commenter stated that the EPA has not committed to a definitive review/comment/approval process timeframe from which an affected source could estimate the necessary amount of time to complete compliance demonstration requirements. Another commenter agreed and specifically requested that the EPA support delegated agencies in undertaking timely review of test plans and report reviews. A commenter also stated that some sources that do not need an oxidation catalyst still may need to make process adjustments and even conduct extensive maintenance activities, such as replacing combustor components, which can only be performed during scheduled outages.

Many commenters noted that for turbines that cannot meet the formaldehyde standard without oxidation catalysts, capital projects will be needed. According to the commenters, significant capital projects at complex plants, especially retrofit projects, usually entail a multi-year effort and often face spatial limitation challenges. Commenters stated that 3 years to design and install controls is typical. Commenters estimated installing oxidation catalyst would take a minimum of 2 years, but one commenter clarified that estimate assumes no delays. A commenter stated that preliminary engineering assessments suggest that even where adequate load capacity is available at a co-generation unit, 3 to 4 years is still aggressive for engineering, procurement, and installation. Another commenter agreed, noting that the company has a

significant number of affected units that will likely need substantial infrastructure improvements and specific concerns related to turbines that are used to drive compressors integral to the refrigeration process to liquefy natural gas, so it is difficult to determine whether 3 years for compliance would be enough. Commenters stated that in addition to a facility's individual concerns, the more turbines that need oxidation catalysts, the more time providers of emissions controls, parameter monitoring, and related support services will need to meet the demands. Commenters also noted that additional design and installation time could be needed for simple cycle units; construction of a new structure would be required to hold the catalyst and a long outage would be needed for installation due to high exhaust temperatures.

Commenters noted that necessary capital projects would include the following activities (in addition to initial performance testing) and estimated the amount of time to complete selected activities:

- Engineer and design a system to add an oxidation catalyst to reduce CO emissions to meet the formaldehyde standard. One commenter estimated that this step would take 1 year. Another commenter estimated that design would take 6 months and engineering would be 12 months. A commenter estimated that 2 to 5 months would be needed just to evaluate whether structural changes are needed to the turbine ductwork to install the catalyst. Two commenters stated that at least 1 year is needed to plan and install oxidation catalysts.
- Develop a procurement specification for vendors to add an oxidation catalyst, review bids, and select the vendor. One commenter estimated that these activities would take 3 to 7 months and other commenters estimated 6 months.
- Procure the CO oxidation catalyst and any additional associated equipment. A commenter estimated that this step would take 6 months, provided there is enough CO oxidation catalyst available based on demand. Another commenter estimated that 2 to 7 months would be necessary but noted that more than 2 months will likely be needed if there are competing orders. One commenter stated that engineering, procurement, flow modeling, installation, and any necessary modifications to existing equipment (*e.g.,* ductwork modifications) and software would require at least 9 months and more likely 1 year to complete.
- Shut down the combustion turbine, install the oxidation catalyst controls, and then start up the system with new oxidation catalyst. Some commenters estimated that this step would take 6 months and another commenter estimated 1 to 5 months.
- Implement all procedures and systems for parameter monitoring, recordkeeping, and reporting; conduct performance testing for initial compliance; and account for any additional time for contingencies for the previous steps. One commenter estimated that this step would take 6 months. Another commenter estimated that performance testing would take 1 month. One commenter estimated 3 months to start up and test the new equipment. A commenter stated that the amount of time needed to schedule and conduct performance testing would be similar to the time needed for initial testing.
- Ensure that necessary changes are made to the air permit. One commenter stated that for new construction or retrofits, permit amendments would be required prior to construction activities and the permit approval time would be longer than 180 days. One commenter stated that it may take 6 months or more to modify a major source permit. Another commenter noted that for simpler permit amendments, such as changing catalyst specifications, if the application is submitted at the time the catalyst design is determined and approval is granted within 45 days, this step could be concurrent with other activities and would not necessarily add time to the schedule. A commenter also noted that it is possible that addition of a catalyst for formaldehyde control could increase criteria pollutants and require permit action under New Source Review.

Commenters also noted that public power utilities are entities of state and local government and often must work through their governing boards and or city councils to gain funding and approval for capital projects. One commenter stated that this approval process may require obtaining financing or issuing debt/bonds to pay for the projects and coordinating with contractors, labor unions, and crane operators, along with any permits required. The timeframe to secure financing would be in addition to contracting, engineering, equipment installation and testing schedules. The commenter noted that this process would likely take about 6 to 8 months for an oxidation catalyst project. Similarly, a commenter stated that military installations with affected turbines would need to secure appropriations and enter into the contracting process to meet the requirements. A commenter noted that facility budgets are set annually and are integrated into a company's long-range planning. The commenter noted that retrofit projects of this magnitude and affecting multiple facilities would require adjustments and approvals at many levels that may take many months. Another commenter agreed that the significant capital expense for a catalyst would require time to plan and receive approvals.

Two commenters cited particular concerns regarding combustion turbines that are designed for both power and steam generation (combined heat and power (CHP) or co- generation units), noting that they are often highly integrated with other operations. Control device design, construction, and operation must carefully consider site power needs, coordination with the power grid external to the site, and site steam balances. Two other commenters agreed and stated that industrial facilities that have installed stationary combustion turbines cannot meet the site's full steam and electrical load using boilers and purchased electricity. A facility's main transformers and switch gear may not have the capability of running the entire facility at peak load with the site's turbines offline, even if temporary steam boilers could be rented, so facilities typically schedule their turbine outages to coincide with facility outages, when steam and electrical load drop. A commenter noted that the other alternative is to begin load shaving, which carries with it the potential for process unit upsets and unplanned shutdowns. Commenters stated that for facilities that rely on stationary gas turbines to provide steam and electricity for multiple pieces of equipment, extensive utility load studies would be needed to determine the probability of running near the edge of compliance and to plan any turbine shutdown that does not coincide with a major facility turnaround (*e.g.,* whether some equipment can be run without a turbine online). A commenter also stated that for the Electrical Reliability Council of Texas region there is sensitivity regarding even minor generator maintenance during higher electrical demand months.

To address these concerns, one commenter noted that turbine downtime to install controls would need to be performed during the next scheduled facility outage, which typically occurs at a 2-year (or longer) frequency. A commenter suggested that the EPA provide a compliance deadline of the first scheduled turnaround following 3

years after promulgation for CHP sources. Since facility turnarounds can involve a wide range of extensive site maintenance activities (*e.g.,* planned equipment replacement, cleaning, and inspection, among others), the commenter stated that it would be reasonable to coordinate this turnaround time with the downtime necessary to install and implement the design and modification changes, which would minimize the amount of facility time spent offline, ensure steadier production rates across the site, and maximize overall efficiency. Another commenter agreed that additional compliance time may be required to integrate unit down times into facility steam and electrical grid demand timing constraints. A commenter stated that maintenance planning schedules are developed multiple years in advance in order to efficiently coordinate downtime for maintenance and new project construction, and changes to these schedules cannot be implemented until engineering is complete and control equipment availability is known.

Commenters also cited particular concerns with retrofitting turbines that have existing SCRs with oxidation catalysts to meet the standard. One commenter noted that some turbine manufacturers have indicated that further testing will be required before they know whether a retrofitted SCR would be sufficient to attain compliance with the formaldehyde standard. A commenter expressed concern that installation of an oxidation catalyst could negatively impact SCR performance. The commenter noted that the installation would cause changes in temperature and pressure flow and could necessitate increased ammonia usage, all of which could stress the SCR and degrade performance over time. A commenter stated that one member company expects to need to remove and re-engineer their SCR to accommodate oxidation catalysts. The commenter stated that this will require design and engineering time, permitting time, procurement time, construction of the controls, removal of the current SCRs, fabrication of combined system, and reinstallation, and the installation timing will need to be integrated with facility turnaround plans. Commenters stated that turbines with existing SCRs may need to use dual-function or dual-purpose catalysts, which are not ''off-the-shelf'' catalysts. A commenter stated that there is no significant increase in manufacturing time for dual-purpose catalysts, but there are currently only two suppliers of dual- purpose catalysts, so owners and operators may need to account for additional time due to high demand.

Without sufficient time to comply, one commenter stated that many facilities could be out of compliance before controls can be installed. In addition, the commenter noted that if the units are shut down to avoid non-compliance, alternative sources of power would be tapped to fill in any void. The commenter stated that the impact would likely be less efficient facility operation (*i.e.,* increased greenhouse gas and other emissions), reduced reliability of area power grids, and a net increase in emissions compared to running efficient turbine systems. Alternatively, the commenter stated that companies will likely need to either seek compliance schedules or consent agreements or use other legal mechanisms in order to keep operating.

Response: In the original 2004 rulemaking establishing the stay, the EPA clearly indicated that the stay was only being established due to the proposed delisting of certain subcategories of stationary combustion turbines, and that the stay would be lifted if the subcategories were not ultimately delisted. (69 FR 51185; August 18, 2004). As discussed previously, the proposal to delist the four subcategories was never finalized in light of the 2007 decision in *NRDC* v. *EPA,* 489 F.3d 1364 (D.C. Cir. 2007), which addressed limits on the EPA's ability to delist subcategories. Therefore, the EPA is taking action to remove the stay that was put in place while the proposed delisting of subcategories was evaluated. Turbine owners and operators have known since the 2007 decision that the basis for the stay was in question.

Moreover, the EPA indicated in the 2004 rulemaking establishing the stay that ''if the subcategories are not ultimately delisted, the stay will be lifted, and all sources in the subcategories constructed or reconstructed after January 14, 2003 will then be subject to the final standards.'' The EPA also said that sources would be given the same time to demonstrate initial compliance with the emission standards if the stay was lifted as they would have had if there had been no stay. (69 FR 18341; April 7, 2004). As stated in 40 CFR 63.6110(a), owners and operators have 180 calendar days for the initial compliance demonstration. The EPA also indicated in the 2019 proposal to remove the stay that owners and operators of turbines that were subject to the stay of the standards for new gas-fired turbines would be required to comply with all applicable regulatory requirements immediately upon a final action to remove the stay and would have 180 days from the date the stay is removed for the initial compliance demonstration (84 FR 15068; April 12, 2019). Therefore, owners and operators have had notice of the requirements that would apply immediately if and when the stay was lifted and there was no basis for commenter to interpret the EPA's statements concerning initial compliance demonstration as suggesting otherwise.

Regarding the comments that the EPA has provided for extensions of compliance deadlines in CSAPR and the NO_X SIP Call, the EPA notes that in the EPA rules cited by the commenter, the EPA merely codified legally enforceable modifications to deadlines that were imposed by a court. There is no such court action that modifies the compliance deadlines that will be triggered when the stay is lifted. The commenters did not identify any authorities which would allow the EPA to extend or suspend the compliance deadlines for new sources (any source that was constructed or reconstructed after the 2003 NESHAP proposal) established under the CAA and the Part 63 regulations once the stay is lifted.

Comment: One commenter stated that if the EPA finalizes lifting the stay without providing additional time to comply with the rule, the EPA should provide for an administrative noncompliance procedure for owners/operators of turbines affected by the 2004 stay of the rule. The commenter noted that the EPA provided an administrative noncompliance process for certain electric steam generating utility units that were unable to comply timely with the Mercury and Air Toxics Standards (MATS) and asserted that the EPA should provide a similar procedure for stationary combustion turbines that are newly subject to subpart YYYY's numeric emission limitations. The commenter stated that although many more turbines might be affected than boilers that required additional time to meet the MATS, far lower emissions would be likely.

The commenter's suggested procedure would allow owners and operators of turbines that cannot comply immediately with subpart YYYY to provide notice to the Agency of their noncompliance without penalty. The commenter then suggested that thereafter, those affected operators would be given the opportunity to enter into a compliance schedule with enforceable milestones to meet the standard. The commenter stated that affected units should be required to notify their respective state and EPA regional authorities within a short

period of time (*e.g.,* 14 days after promulgation by providing the affected plant's name and address, the name of the responsible officer, and the date of installation of the affected turbine(s). The commenter also suggested that upon receipt of a complete notification, the unit should be eligible for a noncompliance period for a period of no longer than 3 years, provided that the owner/operator subsequently submits a compliance plan with specific milestones for achieving compliance including the emission testing of units newly subject to the numeric emission limits, and, for those units that cannot meet those emission limits, the design, purchase, and installation of pollution controls and parametric monitoring devices.

The commenter also stated that it is likely that the EPA would need a separate rulemaking to add an administrative noncompliance procedure to subpart YYYY. However, the commenter noted that the EPA's Office of Enforcement and Compliance Assurance could administer an administrative order on consent outside of the rulemaking process, similar to the procedure used by the Agency in the MATS. The commenter recommended that the procedure be implemented separately from this rulemaking, in part because each administrative order on consent would be based on a case-by-case review of facts and the EPA's exercise of the Agency's enforcement discretion.

Response: The EPA stated in the memo setting forth the MATS Enforcement Response Policy [3] that the EPA generally does not speak publicly to the intended scope of its enforcement efforts but was doing so in the case of the MATS rule to provide confidence with respect to electric reliability. The commenters did not provide any information to show that such reliability considerations are also a factor for stationary combustion turbine facilities that will be impacted by the removal of the stay. The EPA also notes that only five Administrative Orders were issued in connection with the MATS Policy. The EPA does not agree that it is necessary to establish a special administrative noncompliance procedure for this action. For a source that fails to comply with the applicable requirements of subpart YYYY once the stay is lifted, the EPA will determine an appropriate response, if any, based on, among other things, the good faith efforts of the source to comply.

[3] The Environmental Protection Agency's Enforcement Response Policy for Use of Clean Air Act Section 113(a) Administrative Orders In Relation To Electric Reliability And The Mercury and Air Toxics Standard. *https://www.epa.gov/sites/production/files/documents/mats-erp.pdf.*

IV. Impacts of the Final Rule

The environmental, energy, environmental justice, and economic impacts of the Stationary Combustion Turbine NESHAP were addressed in the original 2004 final rule. See 69 FR 10533–10534 (March 5, 2004). No additional impacts are expected as a result of this final rule.

V. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0541. This action does not impose an information collection burden because the EPA is not making any changes to the information collection requirements.

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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The March 5, 2004, Stationary Combustion Turbine NESHAP final rule was certified as not having a significant economic impact on a substantial number of small entities. This final rule does not impose any additional burden on affected sources beyond the burden already addressed in the original 2004 rule.[4] The EPA has, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

[4] Economic Impact Analysis of the Final Stationary Combustion Turbines NESHAP: Final Report. EPA–452/R–03–014. August 2003. Document ID No. EPA–HQ–OAR–2002–0060–0636.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an 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. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

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. None of the stationary combustion turbines that have been identified as being affected by this action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The 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 EPA performed a demographic analysis of the Stationary Combustion Turbine source category for the RTR, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. The documentation for the analysis can be found in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Stationary Combustion Turbines Source Category Operations* (Document ID No. EPA–HQ–OAR–2017–0688–0071). In the analysis, the EPA evaluated the distribution of HAP-related cancer and noncancer risks from Stationary Combustion Turbine source category emissions across different demographic groups within the populations living near facilities. The results of that analysis indicated that there is not a disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples. This action will further reduce the risks from the source category emissions.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 63 is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

■ 2. Section 63.6095 is amended by adding paragraphs (a)(3) and (a)(4) and removing paragraph (d) to read as follows:

§ 63.6095 When do I have to comply with this subpart?

(a) * * *

(3) If you start up a new or reconstructed stationary combustion turbine which is a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart on or before March 9, 2022, you must comply with the emissions limitations and operating limitations in this subpart no later than March 9, 2022.

(4) If you start up a new or reconstructed stationary combustion turbine which is a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart after March 9, 2022, you must comply with the emissions limitations and operating limitations in this subpart upon startup of your affected source.

* * * * *

[FR Doc. 2022–04848 Filed 3–8–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 391

[Docket No. FMCSA–2018–0224]

RIN 2126–AC15

Record of Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations to eliminate the requirement that drivers operating commercial motor vehicles (CMVs) in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. This requirement is largely duplicative of a separate rule that requires each motor carrier to make an annual inquiry to obtain the motor vehicle record (MVR) for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. To ensure motor carriers are aware of traffic convictions for a driver who is licensed by a foreign authority rather than by a State, the Agency amends the rule to provide that motor carriers must make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit.

DATES: This final rule is effective May 9, 2022.

Comments on the information collections in this final rule must be submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) by April 8, 2022.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than April 8, 2022.

ADDRESSES: Comments and recommendations for the proposed information collections should be sent within 30 days of publication of this final rule to *https://www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Office of Driver and Carrier Operations, MCPSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–4325; *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2018-0224/document* and choose the document to review. To view comments, click this final rule, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Executive Summary

A. Purpose and Summary of the Final Rule

In this final rule, the Agency rescinds 49 CFR 391.27 (Record of violations) and removes all related references to the rule in the Federal Motor Carrier Safety Regulations (FMCSRs). Section 391.27 provides that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations involving only parking, for which the driver has been convicted or has forfeited bond or collateral during the preceding 12 months. When a driver does not have any such violations to report, the driver is required to furnish a certification to that effect. The motor carrier must retain the list of violations or certification of no violations in the driver's qualification file.

FMCSA retains the requirement in § 391.25(a) (Annual inquiry and review of driving record) for an annual MVR inquiry. Section 391.25 requires each motor carrier to make an annual inquiry to obtain the MVR for each driver it employs from every State [1] in which the driver holds or has held a CMV operator's license or permit in the past year. The motor carrier must review the MVR obtained and maintain a copy of it in the driver's qualification file. Section 391.25 applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State.

To ensure motor carriers are aware of traffic convictions for a driver who is licensed by a foreign authority rather than by a State, FMCSA amends § 391.25(a) to require motor carriers to inquire annually of each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. This change requires motor carriers to request MVRs from Canadian and Mexican driver's licensing authorities.

To maintain consistency within part 391 with respect to requests for MVRs, FMCSA makes conforming changes to the hiring process. The Agency amends § 391.23 (Investigation and inquiries) to require a motor carrier to make an inquiry to each driver's licensing authority where the driver holds or has held a motor vehicle operator's license or permit during the preceding 3 years to obtain the driver's MVR when a motor carrier is hiring a driver. FMCSA changes § 391.21 (Application for employment) to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers can make the required inquiries under § 391.23. In addition to the proposed changes, this rule adopts additional minor clarifications and conforming changes, which are outlined in the section discussing changes from the proposed rule and the Section-by-Section Analysis below.

B. Costs and Benefits

The elimination of § 391.27 results in cost savings to drivers, as they will no longer spend time completing a list of convictions for traffic violations or certificate of no convictions. It also results in cost savings to motor carriers, as they no longer have to file the lists or certificates in driver qualification files. The Agency estimates that rescinding § 391.27 results in cost savings of $24.9 million over 10 years, at a 7 percent discount rate. The annualized cost savings are estimated to be $3.5 million.

Changes made in the FMCSRs to require inquiries to Canadian and Mexican driver's licensing authorities have minimal, if any, impact. Only a small proportion of CMV drivers operating in the United States are licensed by a foreign authority rather than by a State. Of the 6.8 million CMV drivers reported in FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics,*[2] the Agency estimates that at most only 2.3 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total 2.8 percent represents 149,119 drivers reported as being employed by Canadian and Mexican motor carriers.[3]

These changes do not increase reporting and recordkeeping costs for motor carriers or drivers. This is because the Motor Carrier Management Information System (MCMIS), the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers, both foreign and domestic, and, for purposes of information collection burden calculation, the median fee for obtaining an MVR from either a foreign or a domestic authority is generally the same.[4] FMCSA uses the MCMIS driver population data, which currently includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork.

In addition, Canadian and Mexican motor carriers are already required by

[1] For purposes of part 391, the term ''State'' includes the District of Columbia (49 CFR 390.5T).

[2] Available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf* (last accessed Oct. 22, 2021).

[3] FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics* shows that 350 non-North American motor carriers are registered to operate in the United States (see Table 1–10). They report employing a total of 1,255 drivers, which is a de minimis number when compared to the 6.8 million CMV drivers operating in the United States. It is very rare for domestic motor carriers to employ drivers licensed by a non-North American authority. Therefore, the focus of FMCSA's analysis is on drivers licensed by Canadian and Mexican driver's licensing authorities.

[4] Motor carriers typically must pay driver's licensing authorities to request MVRs. The current OMB-approved information collection associated with the reporting and recordkeeping requirements of §§ 391.23 and 391.25 estimates the cost incurred by motor carriers to request MVRs based on the median fee for the 51 State driver's licensing agencies (SDLAs). The median fee used in this analysis is based on the 51 SDLAs and Canadian licensing authorities' fees (there is no fee to request MVRs in Mexico). The median fee is $9 with or without the Canadian authorities' fees. Thus, this new requirement imposes no new costs on motor carriers.

their applicable safety codes to request MVRs for their drivers from their country's licensing authorities.[5] Accordingly, FMCSA has determined that the changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to obtain MVRs imposes no new record keeping or reporting costs or burdens. Though Canadian and Mexican motor carriers are not required to change their current business practices and do not have any new costs or burdens imposed as a result of this rule, FMCSA continues to include the costs and burdens for requesting MVRs in the current information collection to treat all motor carriers consistently and for administrative convenience.

FMCSA does not expect this rule will negatively affect CMV safety. Motor carriers are still required by § 391.25 to make an inquiry at least annually to each driver's licensing authority in which an employed driver holds or has held a CMV operator's license or permit to obtain the MVR of each driver they employ. Thus, motor carriers still have a reliable way to learn of any convictions for traffic violations incurred by their driver employees.

III. Abbreviations

AAMVA American Association of Motor Vehicle Administrators
ATA American Trucking Associations, Inc.
BLS Bureau of Labor Statistics
CDLIS Commercial Driver's License Information System
CDL Commercial Driver's License
CMV Commercial Motor Vehicle
DOL Department of Labor
DOT Department of Transportation
ECEC Employer Costs for Employee Compensation
ENS Employer Notification Services
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
ICR Information Collection Request
LTL Less-than-Truckload
MCMIS Motor Carrier Management Information System
MVR Motor Vehicle Record
NAICS North American Industry Classification System
NCSC National Center for State Courts
NDAA National District Attorneys Association
NPRM Notice of Proposed Rulemaking
NSC Canadian National Safety Code
NTSB National Transportation Safety Board
OES Occupational Employment Statistics
OIG Office of Inspector General
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
OTR Over-the-Road
PSP Pre-Employment Screening Program
RFA Regulatory Flexibility Act
RMV Registry of Motor Vehicles
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SDLA State Driver's Licensing Agency
Secretary Secretary of Transportation
SBA Small Business Administration
SOC Standard Occupation Code
§ Section Symbol
TCA Truckload Carriers Association
TL Truckload
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

This final rule eliminates a duplicative paperwork requirement and clarifies the licensing authority from which motor carriers obtain MVRs. The rule is based primarily on the authorities of 49 U.S.C. 31502(b) and 31136(a).

Section 31502(b) authorizes the Secretary of Transportation (Secretary) to establish requirements for the qualifications of employees and the safety of operation of a motor carrier. This rule addresses the qualifications of motor carrier employees, consistent with the safe operation of CMVs.

Section 31136 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a)(1) requires that the Secretary issue regulations on CMV safety, including regulations to ensure that CMVs are operated safely. The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. In accordance with section 31136(a)(2), the requirement for motor carriers to inquire of driver's licensing authorities to obtain the MVR of each driver they employ does not impose any responsibilities on CMV drivers that would impair their ability to operate the vehicles safely. This rule does not address medical standards for drivers or possible physical effects caused by driving CMVs (section 31136(a)(3) and (a)(4), respectively). There is no basis to anticipate that drivers would be coerced (section 31136(a)(5)) because of this rule. In addition, the Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe, and thus to remove, recordkeeping and reporting requirements. This rule rescinds § 391.27 using that authority.

The FMCSA Administrator is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315 as they relate to CMV operators, programs, and safety.

Finally, prior to prescribing any regulations, FMCSA must consider the ''costs and benefits'' (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are addressed in the Regulatory Analyses of this rule.

V. Discussion of Proposed Rule

On December 14, 2020, FMCSA published a notice of proposed rulemaking (NPRM) (85 FR 80745). The NPRM proposed to eliminate the duplicative requirement in § 391.27 that drivers operating a CMV in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. FMCSA proposed to retain the requirement in § 391.25(a) for an annual MVR inquiry, but to change it to require an annual inquiry to obtain the MVR for each driver it employs from every driver's licensing authority, instead of State, in which the driver holds or has held a CMV operator's license or permit in the past year. FMCSA proposed to conform §§ 391.21, 391.23, and 391.51 (General requirements for driver qualification files) by changing references to a ''State'' to a ''driver's licensing authority.'' FMCSA also proposed changes to remove references to § 391.27 in Appendix B to Part 385—Explanation of Safety Rating Process and in §§ 391.11 (General qualifications of drivers), 391.51, and 391.63 (Multiple-employer drivers). A detailed discussion of the regulatory background of § 391.27, the rationale for eliminating it, and what was proposed is set forth in the NPRM (85 FR 80748–50).

VI. Discussion of Comments and Responses

A. Comment Overview

FMCSA requested comments on the NPRM for 60 days, from December 14, 2020 through February 12, 2021, and received 97 submissions. Of those submissions, nine commented on matters outside of the scope of the rulemaking. Two submissions were withdrawn. Accordingly, 86 responsive submissions were received.

The 86 responsive submissions were primarily from individuals. Most of the individuals were drivers or associated with motor carriers. Several commenters identified themselves as compliance or safety professionals for motor carriers. Commenters also represented various trade associations and organizations. Entities that submitted comments and supported the proposed rule included the American Bus Association, the American Trucking Associations, Inc. (ATA), the Owner-Operator Independent Drivers Association

[5] See Section XI.A., below, and footnote 15 for additional information.

(OOIDA), the Tennessee Trucking Association, the Truckload Carriers Association (TCA), the United Motorcoach Association, Driver iQ, and DriverReach. Of the 86 responsive submissions, 71 commenters supported the proposed rule, while 15 commenters opposed it. No comments opposing the rule were received from trade associations, labor organizations, or safety advocate organizations.

Commenters supporting the rulemaking provided multiple reasons for their position. Many commenters expressed that the annual MVR check required by § 391.25 is a more accurate depiction of a driver's traffic conviction history than information received from the driver and that eliminating the requirement would not have an adverse effect on safety. Other common reasons for supporting the elimination of the requirement for drivers to provide a list of their traffic convictions included that it is redundant, time consuming, does nothing to improve safety, is unreliable, takes time away from measures that could improve safety, is merely a recordkeeping ''paper chase,'' and is outdated. Several drivers commented that it can be very difficult to complete the paperwork when they are on the road. One driver stated the requirement is a way for motor carriers to trap drivers in a lie when they have innocently forgotten a conviction. An owner-operator commented that it is a nuisance for such operators to take the time to tell themselves they have not received any convictions. Many motor carriers stated it is time consuming, costly, and burdensome to distribute the forms to drivers, track down drivers who do not return them, and file the forms. One motor carrier commented it takes the better part of a month to receive information from drivers and another estimated the annual administrative burden to be in excess of 100 hours. This commenter added these are hours that could otherwise be spent on improving driver training and communication and other activities more directly targeted at creating better and safer drivers. Several other motor carriers commented that they do not rely on the information provided to them by the drivers.

OOIDA commented that duplicative requirements, such as those in § 391.27, are often more compliance obligations than safety measures, which can disproportionally harm small-business truckers who have to cut through the red tape themselves. The Tennessee Trucking Association commented that the regulation is redundant, and it is hard to get the form completed for over-the-road drivers. It added that most of the time the motor carrier pulls the MVR before the form is completed, so the carrier already knows what is on a driver's record.

The most common reason for opposing the rule related to safety concerns. Those comments and others opposing the rule are discussed below.

B. Safety Concerns Relating to the Elimination of § 391.27

Of the 15 individuals who opposed the rule, 8 specifically cited safety concerns that motor carriers would have no way to know about drivers' traffic convictions without § 391.27. For example, one commenter asked how employers can know what kind of driver they would be hiring without a record of infractions against that driver. Another commenter stated there are going to be more accidents if drivers know they do not have to report them. A different commenter stated, ''This is what keeps the trucking industry safe. When you drop the requirement for this, how are the employers going to know who is a safe driver versus one who is reckless?'' One commenter noted companies need to be aware of changes in the driving habits of drivers receiving violations to prevent accidents. Another commenter stated that eliminating § 391.27 does away with one more control the motor carrier has to monitor the driver's safety performance on the road. A different commenter stated that reporting traffic and safety violations to employers helps a company or driver try to operate more safely.

Another commenter who opposed the rule stated § 391.27 benefits motor carriers because the requirement allows them to review the driving record in both CMVs and personal vehicles. The commenter noted that convictions for driving while intoxicated in a personal vehicle may not be discovered if not for running an MVR. The commenter was in favor of the annual MVR review and indicated some motor carriers and insurers would not obtain MVRs in the absence of the rule. A different commenter stated that too many motor carriers rely on their insurance companies to review the MVR and they often miss relevant information. Another commenter did not want someone with a horrible driving record to be behind the wheel of a CMV.

FMCSA response: After consideration of the comments submitted to the docket, the Agency continues to find that removing § 391.27 will not adversely affect CMV safety. The majority of commenters who opposed eliminating § 391.27 misunderstood the proposal. Many of the commenters understandably confused the requirements of §§ 391.27 and 391.25 because of their duplicative nature. FMCSA emphasizes that the final rule does not remove the annual requirement for a motor carrier to obtain and review an MVR as required by § 391.25. Thus, employers still have a way to know the driving records of their drivers and a way to distinguish safe from unsafe drivers. Furthermore, the Agency retains §§ 391.21 and 391.23, which require motor carriers to obtain and review MVRs and safety performance history when hiring a driver, as well as the general qualification requirements for drivers in § 391.11.

The elimination of § 391.27 does not preclude employers from requiring their drivers to provide a list of their traffic convictions as a condition of employment. Rather, the elimination of § 391.27 provides employers with flexibility to obtain traffic conviction information in a manner that is most efficient and effective in their situation. Eliminating § 391.27 allows employers to redirect their resources in ways that may have greater safety benefits; this is particularly the case for employers that continuously monitor the driving records of their employees.

C. Availability, Timeliness, and Accuracy of Driving Histories

Two commenters noted State traffic conviction reporting has improved significantly. The United Motorcoach Association commented that as recently as a decade ago States were considerably less dependable reporting violations to drivers' state of licensure; however, ''States have improved their reporting significantly.'' An individual commenter stated that the chances of error in the driving history is basically non-existent with the increase in computerized records since § 391.27 was enacted.

In contrast, four commenters raised concerns regarding the availability, timeliness, and accuracy of driver license status and driving histories. Three commenters stated there are issues with States either being slow to report traffic convictions or not reporting them at all. Although ATA recommended eliminating § 391.27 and ''strongly'' supported FMCSA's proposal, ATA noted concerns about FMCSA's efforts to ensure the information provided to motor carriers to make critical safety decisions is accurate, timely, and complete. ATA commented, ''While state MVRs have significantly improved over the last 20 years, there are still significant deficiencies, of varying degrees, across the states.''

ATA cited a recent National Transportation Safety Board (NTSB) report that highlighted deficiencies with the Massachusetts Registry of Motor Vehicles' (RMV) out-of-state driver's license notifications process. According to ATA's summary of the report, the deficiencies led to the RMV's failure to revoke the commercial driver's license (CDL) of a driver involved in a crash that killed seven people. ATA stated the NTSB ''found RMV failed to revoke thousands of non-CDL driver's licenses. While the report singled out [RMV], NTSB concluded that the problems observed in Massachusetts might exist nationwide.''

Two additional commenters noted it can take months for a citation to be fully adjudicated and become a conviction listed on the driver's MVR. One of the commenters expressed concern that these delays put the motor carrier at increased risk, should the driver be involved in an accident during the time the authority takes to rule on the citation.

FMCSA response: Nothing in the comments changes FMCSA's determinations that the lists provided by drivers are less reliable than MVRs issued by driver's licensing authorities and the lists have minimal safety value. There have been significant improvements in data collection and transmission that support this rulemaking since § 391.27 was adopted, and there are more improvements to come. Additionally, the Agency notes that § 391.27 requires drivers to report convictions, not citations, so the impact of delays adjudicating citations exists even in the presence of § 391.27.

In connection with the June 2019 crash that was the subject of the NTSB report referenced above, the NTSB found that the Massachusetts RMV ''was not systematically processing paper notifications it received from other States.'' [6] Because of the crash, FMCSA focused its annual program reviews to determine whether other States had substantial numbers of unprocessed paper notifications. FMCSA notes most unprocessed paper notifications found at the Massachusetts RMV were for non-CMV drivers, who do not fall within FMCSA's regulatory authority.

The use of paper notifications and the challenges of processing them were among the principal issues discovered at the Massachusetts RMV. FMCSA addressed the issues in large part through the Commercial Driver's License Standards, Requirements and Penalties; Exclusively Electronic Exchange of Driver History Record Information final rule published on July 23, 2021 (86 FR 38937). That rule requires SDLAs to implement the exclusive electronic exchange of driver history record information, which includes convictions and withdrawals, for CDL holders. States must achieve substantial compliance with this requirement as soon as practicable, but not later than August 22, 2024. All States currently have the technical capability to transmit driver history record information electronically. In addition, in fiscal years 2019, 2020, and 2021, FMCSA awarded grant funding to the American Association of Motor Vehicle Administrators (AAMVA) to perform a Commercial Driver's License Information System (CDLIS) impact analysis of eliminating the paper exchange of convictions and withdrawals between jurisdictions for the purposes of reporting out-of-state convictions and withdrawals. The purpose of the grants was to analyze the causes, proposed solutions, implementation impacts, and system requirements for ensuring that States transmit out-of-state convictions and withdrawals exclusively through an electronic means.

On July 14, 2021, the DOT Office of Inspector General (OIG) issued its report for a self-initiated audit titled ''FMCSA Has Gaps and Challenges in Its Oversight of CDL Disqualification Regulations.'' OIG made seven recommendations to strengthen FMCSA's oversight of States' actions to comply with Federal CDL disqualification requirements. Completion of the OIG recommendations will strengthen FMCSA's annual program reviews and enhance FMCSA's efforts to keep unsafe CDL drivers off the road. FMCSA is working diligently to complete the OIG recommendations and collaborating with States and AAMVA as appropriate.[7]

Finally, FMCSA continues to provide outreach to courts, which has led to advancements in transmission of convictions from courts to SDLAs. FMCSA leverages Commercial Driver's License Program Implementation grant funds to promote better understanding among judges, prosecutors, and court staff regarding CDL/CMV convictions. For example, the National Center for State Courts (NCSC) created an online Commercial Driving Resource Center for courts, which focuses on research, technical assistance, outreach and awareness, and other resources. One of NCSC's research projects was to review commercial driver cases to learn how they are processed by courts and how courts communicate information to the SDLAs. From this research, the NCSC has developed best practices and identified current challenges for reporting convictions to States. In addition, the National District Attorneys Association (NDAA), under an FMCSA grant, developed a Commercial Driver's License Resource Portal. Several of the resources are centered around the prohibition against ''masking'' convictions.[8] NDAA has developed training, a reference guide, and articles on masking convictions. FMCSA continues to provide grant funding and to engage in outreach in furtherance of enhanced reporting and transmission of convictions from courts to SDLAs.

D. Reporting of All Traffic Citations and Violations

Two commenters recommended that FMCSA change § 391.27 to require drivers to report not only traffic convictions to their employers, but all citations and violations as well. One of the commenters stated that revision would allow employers to track the disposition of a citation to its conclusion. The commenter continued that the fact a citation is dismissed, or the driver is found not guilty in court, does not necessarily mean the driver did not engage in unsafe or risky behavior behind the wheel. According to the commenter, if an employer is aware of the behavior, the employer would have the opportunity to take corrective action and possibly change the unsafe behaviors before the driver is involved in an accident.

FMCSA response: FMCSA does not support this recommended change to § 391.27. Such a change would broaden the burden of the regulation as opposed to reducing it, and its effectiveness would still be dependent on the driver's memory and truthfulness. Moreover, the Agency did not propose to expand the regulatory reporting requirements of § 391.27 in this rulemaking.

E. Traffic Conviction Notification Requirement for Non-CDL Drivers

One commenter opposed elimination of § 391.27 because there is no requirement for non-CDL drivers to inform their employers of traffic

[6] DOT, Office of Inspector General, FMCSA Has Gaps and Challenges in Its Oversight of CDL Disqualification Regulations, July 14, 2021, Report No. ST2021030, page 1. Available at *https://www.oig.dot.gov/library-item/38455* (last accessed Sept. 13, 2021).

[7] FMCSA plans to complete three of the OIG recommendations by March 31, 2022 and the remaining recommendations by December 31, 2023.

[8] ''Masking'' occurs when a court allows the conviction of a CDL holder for a traffic violation to be deferred, dismissed, or go unreported (see 49 CFR 384.225).

convictions within 30 days, as is required by 49 U.S.C. 31303(a) and § 383.31 for CDL drivers. The commenter noted that drivers operating vehicles that do not require a CDL do not always tell employers about receiving a citation, and only a copy of the citation will tell the employer what the driver was driving. The commenter continued that at least once a year these non-CDL drivers must answer that question on a form required by FMCSA.

Although ATA supported the elimination of § 391.27, the group noted that some of its members maintain company policies that require non-CDL drivers operating a CMV to report violations within a predetermined amount of time and that some members raised concerns over eliminating the regulatory requirement for notification. Therefore, ATA suggested that FMCSA consider whether an additional rulemaking to establish a traffic conviction notification requirement for non-CDL drivers like the reporting requirement for CDL drivers in § 383.31 would be warranted.

FMCSA response: The lack of a reporting requirement for non-CDL drivers that parallels the requirement for CDL drivers to inform their employers of traffic convictions within 30 days is not a persuasive reason to retain § 391.27. With respect to adding a reporting requirement for non-CDL holders that parallels § 383.31, ATA correctly states additional rulemaking would be necessary to propose such a change. FMCSA continues to find the annual MVR check required by § 391.25 is a more accurate depiction of a driver's traffic conviction history than information from the driver. Accordingly, FMCSA currently is not considering a future rulemaking on this topic. However, as stated above, the elimination of § 391.27 does not preclude employers from requiring their drivers to provide a list of their traffic convictions as a condition of employment.

F. Obtaining MVRs From Foreign Driver's Licensing Authorities

Four comments considered the change to require motor carriers to request MVRs from foreign driver's licensing authorities. Two industry vendors, DriverReach and Driver iQ, commented that the change is logical and appropriate because affected motor carriers already obtain these records for safety and driver screening purposes, so the change should not add a new burden or expense. ATA stated that it supports the revision to ensure that the requirement extends to all jurisdictions.

TCA noted a concern that stakeholders may not know where or how to request MVRs from Mexico or Canada. TCA requested that FMCSA implement an educational campaign prior to finalizing this rule to tell motor carriers how to request an MVR for international drivers. Some of ATA's members raised concerns about obtaining foreign MVRs from outside North America. ATA stated, however, that the ''good faith effort'' requirement provides motor carriers with sufficient flexibility to address situations where an MVR might be difficult or impossible to obtain.

Driver iQ commented that it often can take 90 to 120 days to obtain MVRs from foreign driver's licensing authorities and requested that FMCSA consider a lengthy effective date for any final rule. It commented further that FMCSA should consider language requiring a motor carrier to maintain documentation of each report request. In the event no report is received, the document would be used by a motor carrier to demonstrate a good faith effort to obtain it. Driver iQ also requested that the regulation include language requiring the foreign authority to provide access to the reports by an appointed agent of the carrier.

FMCSA response: FMCSA adopts the change to require motor carriers to request an MVR from foreign driver's licensing authorities as proposed. Because motor carriers already appear to be requesting MVRs, a longer effective date is not necessary.

In practice, this change will have minimal impact on domestic motor carriers and, therefore, educational outreach to them is not necessary. However, FMCSA will re-evaluate the need for public outreach if questions arise during implementation. Only a small proportion of CMV drivers operating in the United States are licensed by a foreign authority rather than by a State. Most of these drivers are employed by Canadian and Mexican motor carriers. As noted above, a de minimis number of CMV drivers who are licensed by a non-North American authority operate in the United States, and it is very rare for domestic motor carriers to employ such drivers. Accordingly, the number of drivers for whom domestic motor carriers will be required to obtain MVRs from foreign driver's licensing authorities is small, and it will be a very rare occurrence to request an MVR from a non-North American authority. In such situations, it is reasonable to conclude that the driver will know how to obtain an MVR.

Many motor carriers most likely already maintain documentation of each MVR they request (at least until an MVR is received); however, FMCSA declines to make that a regulatory requirement, which would increase the paperwork burden of the regulation. The Agency clarifies that the requirement to make a ''good faith effort'' to obtain an MVR applies to investigations made when hiring a driver under § 391.23(b), not to the annual MVR review.

FMCSA does not have authority to require foreign authorities to provide access to their records by an appointed agent of the motor carrier. Requests for MVRs must be made in the form and manner each authority prescribes. However, FMCSA notes that its guidance for § 391.25 is revised to provide that motor carriers may use third parties to ask driver's licensing authorities for copies of the driving record of driver-applicants.

G. Impact on Driver Qualification Files

TCA encouraged FMCSA to conduct an educational campaign on how the elimination of § 391.27 would affect the driver qualification file because the list currently required by § 391.27 must be included in the file. TCA stated carriers must be fully aware of and understand the recordkeeping changes they will need to make. TCA offered to publicize the new requirements to its members but urged FMCSA to go further and hold public educational events to ensure all parties are made aware of the impacts of this new rule on driver qualification files.

FMCSA response: Because this rule eliminates the requirements in § 391.27 for drivers to provide either a list of their traffic convictions or a certificate that they do not have any traffic convictions to report to their employers, there no longer is any document for an employer to place in the driver qualification file. This rule amends § 391.51 by eliminating paragraph (b)(6), which currently provides the driver qualification file must include the documents required by § 391.27. FMCSA does not plan to hold public educational events in connection with the rule. However, FMCSA will re-evaluate the need for public outreach if questions arise during implementation.

H. Changes to § 391.23(b)

TCA commented that it supports FMCSA's proposal to amend § 391.23(b) to remove the requirement in the hiring process for a motor carrier that receives no MVR from the driver's licensing authority to certify that no record exists for the driver in that jurisdiction. TCA noted that this requirement currently exists on top of the required documentation of the good faith effort to

obtain the MVR. TCA stated this is another positive example of FMCSA thoughtfully reviewing its regulations to remove inefficiencies and applauded the Agency for recommending this change to alleviate the recordkeeping burden on carriers.

FMCSA response: FMCSA adopts the change to § 391.23(b) as proposed in the NPRM. FMCSA agrees that documentation of a good faith effort to obtain the MVR is sufficient evidence of compliance with the regulatory requirement. Moreover, it is impossible for a motor carrier to know what records are or are not maintained for a particular driver by the licensing authority, because the motor carrier does not have access to a licensing authority's records.

I. Employer Notification Services (ENS)

ATA, Driver iQ, and DriverReach suggested that FMCSA increase its focus on greater adoption of ENS systems by States. State-based ENS systems allow employers to be notified automatically when there is a change to driver history record information. These commenters endorsed the use of ENS as a means to improve safety but noted only 18 States currently have systems in place that are consistent with FMCSA standards and guidance.

FMCSA response: FMCSA agrees that continuous monitoring systems are very effective tools to keep employers aware of changes to driver history record information, which is likely to enhance safety. Indeed, several NPRM commenters stated they use continuous monitoring systems and find them very beneficial. As acknowledged by DriverReach and Driver iQ, FMCSA did not make any proposals relating to ENS in the NPRM and, therefore, is not addressing it in this final rule. However, the rule eliminates duplicative effort and increases flexibility for employers to use safety-enhancing tools, including continuous monitoring systems.

FMCSA notes, as did some commenters, that the Agency currently has a web-based Pre-Employment Screening Program (PSP). As stated by the American Bus Association, PSP helps motor carriers make more informed hiring decisions by providing secure, electronic access to a CMV driver's 5-year crash and 3-year inspection history from FMCSA's MCMIS database.

J. Reporting of Traffic Violations Generally

One commenter asked if the rule applies to reporting past convictions for driving while intoxicated and driving under the influence. Another commenter recommended a change so that drivers would not have to report less serious and minor traffic violations to their employers.

FMCSA response: This rule only eliminates § 391.27 and its requirement that drivers operating CMVs in interstate commerce prepare and submit a list of their traffic convictions to their employers annually. It does not change the requirement in § 383.31 for CDL drivers to inform their employers of all traffic convictions in any type of vehicle within 30 days. It also does not change the conviction information required to be provided to prospective employers on employment applications under § 391.21. Thus, convictions for driving while intoxicated and driving under the influence continue to be reportable under §§ 383.31 and 391.21. These regulations require reporting of all traffic convictions other than those that relate only to parking. FMCSA did not propose and is not considering a change to the reporting requirements for these regulations.

K. Outside the Scope of the Rulemaking

Two commenters recommended changes to the requirements in § 391.21 for employment applications. One recommended that paragraphs (b)(7), (b)(8), and (b)(9), which require reporting of accidents, traffic convictions, and actions against a driver's license, respectively, be eliminated because they also are duplicative. The other commenter recommended the elimination of paragraph (b)(11) that requires 10 years of driving history for drivers applying to operate a CMV that requires a CDL.

Rather than responding to the proposed rule, one commenter reported on the commenter's own driving record. Another commenter recommended a regulatory change to require drivers and motor carriers to confer to ensure citations have been paid in a timely manner. Alternatively, the commenter recommended that FMCSA create a public system that could be checked to see whether citations have been paid.

Several commenters addressed regulations and concerns relating to electronic logging devices, hours of service, the Drug and Alcohol Clearinghouse, brokers, and the Compliance, Safety, Accountability (CSA) program. One commenter stated it does not make sense that medical certification must be maintained when a driver is taking a break from trucking. Another commenter suggested that money saved be used to educate medical examiners on FMCSA protocols and regulations.

FMCSA response: Because these comments are outside the scope of this rulemaking or are not responsive to the NPRM, no response from FMCSA is required. However, while general changes to the employment application in § 391.21 are outside the scope of this rulemaking, the Agency published an advance notice of proposed rulemaking on March 19, 2019 that requested comment on changes to § 391.21 (84 FR 8497). Additionally, the requirement that drivers provide their employment history operating a CMV requiring a CDL during the prior 10 years when applying to operate such a CMV is statutorily mandated; therefore, FMCSA may not eliminate that requirement (see 49 U.S.C. 31303(c) and 49 CFR 383.35). Commenters presenting an issue that is outside of the scope of this rulemaking may wish to consult § 389.31 for information on how to petition FMCSA to establish, amend, interpret, clarify, or withdraw a regulation to the extent such options relate to their concerns.

VII. Guidance

FMCSA employs guidance to explain how the Agency applies regulations to specific facts. Such guidance does not have the force and effect of law, is strictly advisory, and is not meant to bind the public in any way. Conformity with guidance is voluntary. Guidance is intended only to provide information to the public regarding existing requirements under the law or FMCSA policies. Guidance does not alter the substance of a regulation. Guidance for specific regulations is available through the Guidance Portal on FMCSA's website.

This rule amends regulations that have associated guidance. FMCSA changes the guidance to conform to the changes made in this rule.

A. Section 391.23 Investigation and Inquiries

FMCSA revises Question 2 to § 391.23 [9] as proposed to reflect that inquiries for MVRs must be made to all ''driver's licensing authorities'' where the driver holds or has held a motor vehicle operator's license or permit, rather than only to ''States.'' The revised guidance for Question 2 reads as follows:

Question 2: May motor carriers use third parties to ask driver's licensing authorities for copies of the driving record of driver-applicants?

Guidance: Yes. Driver information services or companies acting as the motor carrier's agent may be used to

[9] Available at *https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies* (FMCSA–DQ–391.23–Q002) (last accessed Oct. 13, 2021).

contact driver's licensing authorities. However, the motor carrier is responsible for ensuring the information obtained is accurate.

B. Section 391.25 Annual Inquiry and Review of Driving Record

With respect to Question 1 to § 391.25,[10] Driver iQ recommended that the guidance be revised to make clear that the driver's list of convictions is not part of ''information about the driver's experience'' that is ''reasonably available.'' Driver iQ stated, ''This change would be consistent with the spirit and letter of the NPRM, and it would clarify what information is reasonably available to a motor carrier going forward.'' While the Agency has considered Driver iQ's suggestion to revise the guidance in Question 1, FMCSA has concluded that a change is not needed based on the elimination of the § 391.27 requirements.

Accordingly, the Agency revises Question 1 to § 391.25 as proposed to reflect that MVRs must be requested from all ''driver's licensing authorities'' rather than only ''States.'' FMCSA makes an additional change for clarity. The Agency replaces the words ''are such indications'' with ''are indications of disregard for public safety.'' The revised guidance for Question 1 reads as follows:

Question 1: To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of § 391.25?

Guidance: The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether they are part of an official record maintained by a driver's licensing authority, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of traffic and criminal laws, as well as the driver's involvement in motor vehicle accidents, are indications of disregard for public safety and must be considered. A violation of size and weight laws should also be considered.

With respect to Question 3 to § 391.25,[11] the Agency revises the question as proposed to reflect that MVRs must be requested from all ''driver's licensing authorities,'' rather than only ''States,'' and to improve clarity and correct grammatical errors. In addition, FMCSA removes the first sentence of the proposed guidance because it is not responsive to the question. The sentence provided, ''An examination of the official driving record maintained by the driver's licensing authority is not required during the annual review.'' The revised guidance for Question 3 reads as follows:

Question 3: May motor carriers use third parties to ask driver's licensing authorities for copies of driving records to be examined during the carrier's annual review of each driver's record?

Guidance: Yes. Motor carriers may use third-party agents, such as driver information services or companies, to contact driver's licensing authorities and obtain copies of driving records. However, the motor carrier is responsible for ensuring the information is accurate.

C. Section 391.27 Record of Violations

FMCSA rescinds the guidance to § 391.27 as proposed.

VIII. Changes From the NPRM

In this final rule, FMCSA adopts all the provisions proposed in the NPRM and introduces additional minor clarifications and conforming changes. FMCSA amends the definition of *motor vehicle record* in § 390.5T (Definitions) by clarifying that only records of drivers licensed by a State are subject to the Driver Privacy Protection Act and by making editorial changes for clarity. The definition reads, ''*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.'' FMCSA conforms § 391.63(b) by changing ''State'' to ''driver's licensing authority'' in the first sentence.

The Agency also makes conforming changes to address cross-references impacted by the elimination of § 391.27 and redesignation of section paragraphs. In newly redesignated § 391.51(b)(6)(iii), FMCSA changes the reference from ''§ 391.51(b)(8)'' to ''§ 391.51(b)(7).'' In § 391.67(a) (Farm vehicle drivers of articulated commercial motor vehicles), the Agency changes the references from ''Section 391.11(b)(1), (b)(6) and (b)(8)'' to ''Section 391.11(b)(1) and (b)(7).'' Similarly, in § 391.68(a) (Private motor carrier of passengers (nonbusiness)), the Agency changes the references from ''Section 391.11(b)(1), (b)(6) and (b)(8)'' to ''Section 391.11(b)(1) and (b)(7).''

IX. International Impacts

Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. The specific impacts of this rule on foreign licensed drivers and foreign motor carriers operating CMVs in the United States are discussed throughout the preamble of this rule.

X. Section-by-Section Analysis

This section summarizes the regulatory changes FMCSA makes to 49 CFR parts 385, 390, and 391. FMCSA adopts all the provisions as proposed in the NPRM and repeats the specific changes for the convenience of the reader. FMCSA also describes additional minor clarifications and conforming changes made in §§ 390.5T, 391.51, 391.63, 391.67, and 391.68.

A. Part 385

Appendix B to Part 385—Explanation of Safety Rating Process

In Section VII of Appendix B to Part 385, FMCSA makes conforming changes to the List of Acute and Critical Regulations. Specifically, the current entry for § 391.51(b)(7) (failing to maintain medical examiner's certificate in driver's qualification file (critical)) is redesignated as § 391.51(b)(6). This reflects that current § 391.51(b)(6), which relates to removed § 391.27, is deleted and that the paragraphs in that section are redesignated.

B. Part 390

Sections 390.5T and 390.5 (Suspended) [12]—Definitions

In addition to the changes proposed in the NPRM, FMCSA amends the definition of *motor vehicle record* in §§ 390.5T and 390.5 by inserting '', for drivers licensed by a State only, is'' before the reference to the Driver Privacy Protection Act. This clarifies that only records of drivers licensed by a State are subject to the Driver Privacy Protection Act. FMCSA also makes minor changes for clarity. The Agency replaces the comma before ''provided'' with ''that is'' and deletes the comma after ''such as.'' The definition reads, ''*Motor vehicle record* means the report of the driving status and history of a

[10] Available at *https://www.fmcsa.dot.gov/registration/commercial-drivers-license/what-extent-must-motor-carrier-review-drivers-overall* (FMCSA–DQ–391.25–Q001)) (last accessed Oct. 13, 2021).

[11] Available at *https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies-0* ((FMCSA–DQ–391.25–Q003)) (last accessed Oct. 13, 2021).

[12] On January 17, 2017, FMCSA suspended certain regulations relating to the electronic Unified Registration System and delayed their effective date indefinitely (82 FR 5292). The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017. Section 390.5 was one of the sections suspended and § 390.5T, which is currently in effect, was one of the replacement sections added (82 FR 5311).

driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

C. Part 391

Section 391.11—General Qualifications of Drivers

In § 391.11, FMCSA removes paragraph (b)(6), which relates to removed § 391.27, and redesignates paragraphs (b)(7) and (b)(8) as paragraphs (b)(6) and (b)(7).

Section 391.21—Application for Employment

In § 391.21(b)(5), FMCSA changes the reference to a ''State'' to a ''driver's licensing authority.''

Section 391.23—Investigation and Inquiries

In paragraphs (a)(1) and (b) of § 391.23, FMCSA changes the references to a ''State'' to a ''driver's licensing authority.'' In paragraph (b), FMCSA also removes the requirement for a motor carrier to certify that no record exists when no MVR is received from the licensing authority for a driver.

Section 391.25—Annual Inquiry and Review of Driving Record

In § 391.25(a), FMCSA replaces the words ''the appropriate agency of every State in which'' with the words ''each driver's licensing authority where.''

Section 391.27—Record of Violations

FMCSA removes § 391.27 and reserves it for future use.

Section 391.51—General Requirements for Driver Qualification Files

FMCSA makes several changes to § 391.51. The Agency deletes the words ''State'' in paragraph (b)(2) and ''State driver licensing agency'' in paragraph (b)(4) and adds in their place the words ''driver's licensing authority.'' FMCSA deletes paragraph (b)(6), which relates to deleted § 391.27, and redesignates paragraphs (b)(7) through (b)(9) as paragraphs (b)(6) through (b)(8). The Agency revises paragraph (d)(1) by deleting the words ''State driver licensing agency'' and adding in their place ''driver's licensing authority.'' FMCSA deletes paragraph (d)(3), to remove the reference to deleted § 391.27, and redesignates paragraphs (d)(4) through (d)(6) as paragraphs (d)(3) through (d)(5). The cross-reference in newly redesignated paragraph (d)(3) is changed from ''§ 391.51(b)(7)(ii)'' to ''§ 391.51(b)(6)(ii)'' to reflect the redesignations in paragraph (b). Finally, in addition to the changes proposed in the NPRM, FMCSA changes the internal cross-reference in newly redesignated paragraph (b)(6)(iii) from ''§ 391.51(b)(8)'' to ''§ 391.51(b)(7)'' to reflect the redesignations in paragraph (b).

Section 391.63—Multiple-Employer Drivers

In § 391.63, FMCSA removes paragraph (a)(5) to delete the reference to § 391.27. The Agency conforms punctuation to reflect paragraphs (a)(3) and (a)(4) are now the last in the list. In addition to the changes proposed in the NPRM, FMCSA conforms the first sentence of paragraph (b) by changing ''State'' to ''driver's licensing authority.'' FMCSA also replaces all instances of ''his/her'' with ''the driver's'' and adds a serial comma after ''type.''

Section 391.67—Farm Vehicle Drivers of Articulated Commercial Motor Vehicles and Section 391.68—Private Motor Carrier of Passengers (Nonbusiness)

In addition to the changes proposed in the NPRM, FMCSA makes conforming changes to cross-references in §§ 391.67 and 391.68. The changes are necessary because FMCSA deletes from § 391.11 the paragraph previously designated as (b)(6) (relating to removed § 391.27) and redesignates the remaining paragraphs. Accordingly, FMCSA changes the cross-references in §§ 391.67(a) and 391.68(a) from ''391.11(b)(1), (b)(6) and (b)(8)'' to ''391.11(b)(1) and (b)(7).''

XI. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impacts of this rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. OIRA within OMB has determined that this rule is not a significant regulatory action under section 3(f) of E.O. 12866. Accordingly, OMB has not reviewed it under that E.O.

As described above, the purpose of this regulatory action is to remove § 391.27 and the requirement for drivers to provide their motor carrier employers a list of convictions for traffic violations (other than parking) that occurred during the previous 12 months or a certification of no convictions. This rule retains the requirement in § 391.25 that motor carriers make an annual inquiry to obtain a driver's MVR. Because § 391.25 is limited to inquiries for drivers licensed by a State, this rule modifies § 391.25 to require motor carriers to request a driver's MVR from each licensing authority that issued the driver a license. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA makes conforming changes to § 391.23, which requires motor carriers to request MVRs for the 3 years preceding the date of employment when hiring a driver. These changes require motor carriers to request MVRs from Canadian and Mexican driver's licensing authorities. A change is also made in § 391.21 to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers can make the required inquiries under § 391.23. These changes do not add new reporting or recordkeeping costs.

The elimination of § 391.27 results in cost savings to drivers because they will no longer spend time completing a list of convictions for traffic violations. It will also result in cost savings to motor carriers because they will no longer have to file the lists in driver qualification files. The Agency estimates that this rule will result in cost savings to CMV drivers and motor carriers of $35.5 million over 10 years on an undiscounted basis, and $24.9 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to cost savings of $3.5 million at a 7 percent discount rate.

The changes to §§ 391.21, 391.23, and 391.25 do not increase reporting or recordkeeping costs. This rule institutes new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State. However, the current OMB-approved information collection request (ICR) for §§ 391.23 and 391.25 titled ''Driver Qualification Files,'' OMB Control Number 2126–0004, already includes reporting and recordkeeping costs and burdens incurred by motor carriers to request MVRs for such drivers. As explained below, applicable motor carriers will not incur an increase in costs or burdens resulting from this rule. Nonetheless, FMCSA retains these costs and burdens under OMB Control Number 2126–0004 to treat all motor carriers consistently and for administrative convenience.

All motor carriers authorized to operate in the United States are required to file with FMCSA Form MCS–150 (Motor Carrier Identification Report), Form MCS–150B (Motor Carrier Identification Report and Hazardous Material Permit Application), or Form MCSA–1 (the online application). These registration forms require motor carriers to report the number of drivers they employ and are the source of driver counts in MCMIS, which counts the total number of drivers reported by both domestic and foreign motor carriers. In turn, FMCSA uses the MCMIS driver population data published in FMCSA's annual *Pocket Guide to Large Truck and Bus Statistics,* which includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Thus, requests for MVRs for drivers holding licenses issued by Canadian or Mexican licensing authorities have already been included in the OMB-approved information collections for §§ 391.23 and 391.25. In addition, the time for all drivers to prepare and submit employment applications has already been included in the information collection for § 391.21.

This change requiring MVR inquiries to Canadian and Mexican driver's licensing authorities will have minimal, if any, impact, because relatively few drivers operate in the United States who are licensed by a foreign authority rather than by a State. Of the 6.8 million CMV drivers reported in FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics,*[13] the Agency estimates that at most only 2.3 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total 2.8 percent represents 149,119 drivers reported as being employed by Canadian and Mexican motor carriers operating in the United States.

Canadian and Mexican motor carriers are already required by their applicable safety codes to request MVRs for their drivers from their licensing authorities.[14] Accordingly, FMCSA has determined that the changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities for MVRs will not impose any new recordkeeping or reporting costs or burdens because Canadian and Mexican motor carriers are already making these inquiries. Though Canadian and Mexican motor carriers will not be required to change their current business practices and would not have any new costs or burdens imposed as a result of the final rule, FMCSA continues to include the costs and burdens for requesting MVRs in the information collections to treat all carriers consistently and for administrative convenience.

This rule does not increase costs to motor carriers because of fees paid to Canadian and Mexican driver's licensing authorities to request MVRs. The OMB-approved supporting statement for the Driver Qualification Files ICR, OMB Control Number 2126–0004 (available in the docket), provides that SDLAs assess motor carriers a $10 fee to obtain MVRs consisting of a $9 median fee charged by 51 SDLAs, plus a $1 third-party processing fee. FMCSA has surveyed fees charged by driver's licensing authorities and third-party processing companies in Canada. FMCSA has determined that the median fee charged for an MVR in Canada is also $9, when adjusted to United States dollars, and that third-party processing fees are consistent as well. There is no fee to request MVRs in Mexico. However, fees are considered a transfer payment, so they are not included in the benefit-cost analysis. They are included in the Paperwork Reduction Act supporting statement prepared for the final rule.

For all the above reasons, FMCSA has determined that the changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to request MVRs will not impose any new reporting or recordkeeping costs.

Scope and Key Inputs to the Analysis

The baseline for this analysis is the monetized value of motor carriers' and drivers' time spent meeting the annual reporting and recordkeeping requirements of § 391.27. The estimated cost of this information collection has been approved by OMB in the supporting statement for the Driver Qualification Files ICR. In this ICR, the Agency estimated the 3-year average burden associated with § 391.27 at 0.12 million hours and $3.9 million. The baseline in this analysis extends the supporting statement projections an additional 7 years. That is, it estimates the costs that drivers and motor carriers would incur over the 10-year period 2022 through 2031, in the absence of the final rule.

Driver Population Projection

The driver population is based on a 0.448 percent annual growth rate applied to the 6.8 million driver population reported in FMCSA's *2020 Pocket Guide to Large Truck and Bus Statistics.*[15] The growth rate is a weighted average of the annual compound growth rates estimated using the United States Department of Labor (DOL), Bureau of Labor Statistics (BLS) Employment Projections Program point projections for the four categories of commercial vehicle drivers for 2019 and 2029.

Table 1 shows the calculation of the growth rate and the calculation of the weighted average compound growth rate.[16]

[13] Available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf* (last accessed Aug. 12, 2021).

[14] Canadian National Safety Code (NSC) Standard 15, Facility Audit, establishes the minimum requirements for a Facility Audit and the contents of a driver's personnel/payroll records. Standard 15, Appendix A, Section 3 requires motor carriers to make available for a Facility Audit a driver abstract issued within the last 12 months. In addition, the driver's personnel/payroll record must include name, date of birth and license number, current license class and status (*e.g.,* active or suspended), driver qualifications, and 2-year histories of traffic and criminal driving offenses, convictions, and accidents. NSC Standard 15 is available at *https://ccmta.ca/en/national-safety-code/national-safety-code-nsc#NSC* (last accessed Nov. 23, 2021). Similarly, the ''Reglamento del Servicio de Medicina Preventiva en el Transporte'' (Transportation Preventive Medicine Service Regulations) in Chapter VI (Of Solitary Responsibility of the Concessionaire or Permittee, or Airline Operator), Article 39 provides generally that motor carriers are to keep updated individual files for their employees that include records related to accidents or incidents of federal transport. The regulations are available at *http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGPMPT/Documentos/normatividad/Reglamento_DGPMPT_10-05-2013.pdf* (last accessed Nov. 23, 2021).

[15] Available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf* (last accessed Oct. 26, 2021).

[16] DOL, BLS. Occupational Employment and Wages, May 2020, 53–0000 Transportation and Material Moving Occupations. Available at *https://www.bls.gov/oes/current/oes530000.htm* (last accessed Aug. 12, 2021).

TABLE 1—POPULATION GROWTH RATE

BLS standard occupation code (SOC)	2019 Total employment (thousands)	2019 Employment percentage of total (%)	2029 Projected total employment (thousands)	Compound annual growth rate in employment (2019–2029) (%)	Weighted average compound growth rate (%)
	A	B = A ÷ Sum of Column A	C	D = ((C ÷ A) (1 ÷ 10)) − 1	E = B × D
Heavy and tractor-trailer truck drivers (53–3032)	2,030	52.2	2,061	0.150	0.078
Light truck or delivery services drivers (53–3033)	1,019	26.2	1,079	0.579	0.15
Passenger vehicle drivers, except bus drivers, transit and intercity (53–3058) *	614	15.8	682	1.056	0.17
Bus drivers, transit and intercity (53–3052) **	223	5.7	244	0.894	0.05
Weighted Average Growth Rate					0.448

Note: The 0.448 percent weighted average growth rate does not equal the sum of the components due to rounding.
* BLS SOC 53–3058 is a new category introduced in 2019. Data for prior years are the sum of two now discontinued subcategories, SOCs 53–3022 and 53–3041.
** SOC 53–3021 changed to SOC 53–3052.

Table 2 shows the extrapolation of the driver population from the 6.8 million driver population at a 0.448 percent average annual growth. The 10-year projection period used in this analysis begins in 2022 and ends in 2031. This 10-year population projection is the base from which the Agency estimates the number of drivers who, in the absence of the final rule, would be required to provide motor carriers an annual list of violations.

TABLE 2—DRIVER POPULATION 2022–2031

Year	Number of drivers
2022	6,891,843
2023	6,922,732
2024	6,953,759
2025	6,984,926
2026	7,016,232
2027	7,047,678
2028	7,079,266

TABLE 2—DRIVER POPULATION 2022–2031—Continued

Year	Number of drivers
2029	7,110,995
2030	7,142,866
2031	7,174,880

The number of drivers who will no longer be required to submit an annual list of convictions for traffic violations or certificate of no convictions is estimated as the difference between the projections of annual driver population and annual job openings. The number of job openings is estimated by applying a 77.1 percent average annual driver turnover rate to the annual driver population shown in Table 2. The turnover rate is derived from turnover rates reported for three categories of motor carriers by ATA, which are over-the-road (OTR) carriers at 92 percent, truckload (TL) carriers at 74 percent, and less-than-truckload (LTL) carriers at 14 percent. The OTR category is made up predominantly of CMV drivers transporting general freight on behalf of for-hire motor carriers. The TL category is made up predominantly of CMV drivers transporting specialized freight on behalf of for-hire motor carriers. The LTL category is made up of CMV drivers transporting the property of their motor carrier and drivers engaged in specialized operations analogous to LTL operations. The individual turnover rates are weighted by the relative shares of the driver population distributed among the three categories of motor carriers, which are 67 percent for OTR drivers, 18 percent for TL drivers, and 15 percent for LTL drivers.[17] As shown in Table 3, the sum of the product of the turnover rates and percentage of drivers by category results in a 77.1 percent weighted average turnover rate.

TABLE 3—WEIGHTED AVERAGE TURNOVER RATE

Driver type	Turnover rate (percent)	Percent of drivers in driver type category (percent)
Over-the-Road	92	67
Truckload	74	18
Less-than-Truckload	14	15
Weighted Average Turnover Rate		77.1

Note: The weighted average turnover rate is calculated as: (92% × 67%) + (74% × 18%) + (14% × 15%) = 77.1%.

Table 4 shows the annual projections of the number of drivers subject to the reporting requirements of § 391.27 who will no longer have to submit a list of convictions for traffic violations or certificate of no convictions, as § 391.27 is rescinded. Drivers who have been recently hired are not subject to the annual reporting requirements of § 391.27. The hiring process includes similar reporting requirements for which the information collection burden is accounted for under a different regulation. The projections cover the 10-year period ending in 2031.

[17] American Transportation Research Institute, *ATRI Analysis of the Operational Cost of Trucking: 2020 Update.* Available at *https://truckingresearch.org/wp-content/uploads/2020/11/ATRI-Operational-Costs-of-Trucking-2020.pdf* (last accessed Aug. 12, 2021).

TABLE 4—DRIVER POPULATION AFFECTED BY FINAL RULE

Year	Driver population	Number of job openings	Driver population subject to § 391.27
	A = from Table 2	B = A × 77.1%	C = A − B
2022	6,891,843	5,310,854	1,580,989
2023	6,922,732	5,334,657	1,588,075
2024	6,953,759	5,358,567	1,595,192
2025	6,984,926	5,382,584	1,602,342
2026	7,016,232	5,406,708	1,609,524
2027	7,047,678	5,430,941	1,616,737
2028	7,079,266	5,455,282	1,623,984
2029	7,110,995	5,479,733	1,631,262
2030	7,142,866	5,504,293	1,638,574
2031	7,174,880	5,528,963	1,645,918

Wage Rates

FMCSA evaluated the opportunity cost of time for drivers using a rounded representative driver wage rate of $37 per hour. This hourly cost represents the value of driver time that, in the absence of this rule, the driver would spend completing a list of convictions for traffic violations or certificate of no convictions but will now be available to perform other tasks. Table 5 summarizes the estimation of a weighted average hourly wage of $36.52 for drivers. The weighted average hourly wage is derived from the BLS Occupational Employment Statistics (OES) estimates of the median wages of four categories of drivers assigned to the BLS SOCs shown in Table 5. The median hourly wages for each driver SOC are increased to account for fringe benefits and motor carrier overhead as explained below. The hourly wages are weighted based on the population of drivers for each SOC relative to the total population as shown by the percentages in Table 5, Column B.

BLS does not publish data on fringe benefits for specific occupations, but it does publish fringe benefit data for the broad industry groups in its quarterly Employer Costs for Employee Compensation (ECEC) news releases. This analysis uses the ECEC data to estimate a fringe benefit rate based on the hourly wage for the ''transportation and warehousing'' sector average hourly wage ($26.45) and average hourly benefits ($13.78) for the ''transportation and warehousing'' sector.[18] The ratio of the two values results in a 52.1 percent fringe benefit rate (52.1% = $13.78 per hour ÷ $26.45) that is added to the average hourly wage. The hourly wage, including fringe benefits, is further increased by 27.4 percent to account for motor carriers' overhead.[19]

TABLE 5—DRIVER HOURLY WAGE INCLUDING FRINGE BENEFITS AND MOTOR CARRIER OVERHEAD

Standard occupation title and code	Total drivers	% of Total drivers	Median hourly base wage	Weighted hourly wage	Fringe benefits rate (%)	Overhead rate (%)	Weighted average hourly cost
	A = from BLS OES Data	B = A ÷ Sum of Column A	C = from BLS OES Data	D = B × C	E = from BLS ECEC Data	F	G = D + (D × 0.521) + (D × 0.274)
Heavy and tractor-trailer truck drivers (53–3032)	1,797,710	54.1%	$22.66	$12.26	52.1	27.4	$22.01
Light truck or delivery services drivers (53–3033)	929,470	28.0%	$17.81	$4.98	52.1	27.4	$8.94
Bus drivers, transit and intercity (53–3052)	162,850	4.9%	$22.07	$1.08	52.1	27.4	$1.94
Passenger vehicle drivers, except bus drivers, transit and intercity (53–3058)	431,986	13.0%	$15.54	$2.02	52.1	27.4	$3.63
Weighted Average Driver Wage							$36.52

Notes:
(a) The number of drivers is the number of respondents by SOC included in the BLS survey. BLS discontinued the publication of SOC 53–3022, instead it is now included in SOC 53–3058. FMCSA derived the total employees for the original SOC 53–3022 by multiplying it by 0.72.
(b) The $36.52 hourly weighted average wage does not equal the sum of the components due to rounding.

Section 391.27 requires motor carriers to incur labor costs to file drivers' lists of convictions for traffic violations or certificates of no convictions in their driver qualification files. The burden hours associated with this task are monetized using an hourly wage for a file clerk adjusted for fringe benefits and motor carrier overhead. The BLS median wage for a file clerk is $16.39 (SOC 43–4071). The hourly wage is increased for fringe benefits and motor carrier overhead, which results in a $29.42 wage, rounded to $29 (29.42 = $16.39 + (16.39 × (1+52.1%) +16.39 × (1+27.4%)).

[18] DOL, BLS. ''Employer Cost of Employee Compensation December 2020 News Release,'' Table 4: Employer Costs for Employee Compensation for private industry workers by occupational and industry group. Available at *https://www.bls.gov/news.release/pdf/ecec.pdf* (last accessed Nov. 2, 2020).

[19] To estimate the overhead rates on wages, the Agency used industry data gathered for the Truck Costing Model developed by the Upper Great Plains Transportation Institute, North Dakota State University (Berwick, Farooq. Truck Costing Model for Transportation Managers. North Dakota State University. Upper Great Plains Transportation Institute. August 2003. Appendix A, pp. 42–47. Available at *http://www.mountain-plains.org/pubs/pdf/MPC03-152.pdf* (last accessed Aug. 20, 2021)). Research conducted for this model found an average cost of $0.107 per mile of CMV operation for management and overhead, and $0.39 per mile for labor, indicating an overhead rate of 27 percent (27% = $0.107 ÷ $0.39 (rounded to the nearest whole percent)).

Costs

This rule will result in cost savings to drivers and motor carriers. Drivers' cost savings will be the result of no longer having to prepare an annual list of convictions for traffic violations or certificates of no convictions for their employers. Motor carriers will realize cost savings from no longer having to file the lists and certificates in driver qualification files. The Agency estimates that drivers and motor carriers will each spend 2 minutes on their respective tasks.

Table 6 shows the estimated driver cost savings resulting from the removal of § 391.27. Over the 10-year projection period, driver cost savings are estimated at $19.9 million. At a 7 percent discount rate, driver cost savings are estimated at $14.0 million and annualized cost savings are estimated at $2.0 million.

TABLE 6—DRIVER COST SAVINGS

	Driver population providing lists of convictions	Driver burden hours (million)	Driver costs ($ million)	Driver cost at 7% discount rate ($ million)
	A = from Table 4, column C	B = A × (2 minutes ÷ 60)	C = B × $37	D
2022	1,580,989	0.053	($1.9)	($1.8)
2023	1,588,075	0.053	(2.0)	(1.7)
2024	1,595,192	0.053	(2.0)	(1.6)
2025	1,602,342	0.053	(2.0)	(1.5)
2026	1,609,524	0.054	(2.0)	(1.4)
2027	1,616,737	0.054	(2.0)	(1.3)
2028	1,623,984	0.054	(2.0)	(1.3)
2029	1,631,262	0.054	(2.0)	(1.2)
2030	1,638,574	0.055	(2.0)	(1.1)
2031	1,645,918	0.055	(2.0)	(1.0)
Total	.....	0.54	(19.9)	(14.0))
Annualized	.....	.....	.....	(2.0)

Notes:
(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).
(b) Values shown in parentheses are negative values (i.e., less than zero), and represent a decrease in cost or a cost savings.

Table 7 summarizes motor carrier projected cost savings. Over the 10-year projection period, motor carrier cost savings are estimated at $15.6 million. At a 7 percent discount rate, motor carrier cost savings are estimated at $10.9 million and annualized cost savings are estimated at $1.6 million.

TABLE 7—MOTOR CARRIER COST SAVINGS

	Number of lists of convictions to file	Motor carrier burden hours (million)	Motor carrier costs ($ million)	Motor carrier cost at 7% discount rate ($ million)
	A = from Table 4, column C	B = A × (2 minutes ÷ 60)	C = B × $29	D
2022	1,580,989	0.053	($1.5)	($1.4)
2023	1,588,075	0.053	(1.5)	(1.3)
2024	1,595,192	0.053	(1.5)	(1.3)
2025	1,602,342	0.053	(1.5)	(1.2)
2026	1,609,524	0.054	(1.6)	(1.1)
2027	1,616,737	0.054	(1.6)	(1.0)
2028	1,623,984	0.054	(1.6)	(1.0)
2029	1,631,262	0.054	(1.6)	(0.9)
2030	1,638,574	0.055	(1.6)	(0.9)
2031	1,645,918	0.055	(1.6)	(0.8)
Total	.....	0.54	(15.6)	(10.9)
Annualized	.....	.....	.....	(1.6)

Notes:
(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).
(b) Values shown in parentheses are negative values (i.e., less than zero), and represent a decrease in cost or a cost savings.

The estimated cost savings resulting from rescinding § 391.27 total $35.5 million over the 10-year projection period. At a 7 percent discount rate, the estimated total cost savings are $24.9 million and the annualized cost savings are $3.5 million.[20]

Benefits

This rule will allow drivers and motor carriers to more efficiently allocate their time. As discussed above, eliminating the requirement for drivers to provide a list of their convictions for traffic violations or certificate of no violations on an annual basis will reduce the paperwork burden and result in cost savings for drivers and motor carriers. FMCSA does not expect this rule to affect safety negatively. Motor carriers will still be made aware of their employees' convictions for driving violations via the annual MVR check required in § 391.25.

B. Congressional Review Act

This final rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).[21]

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[22] requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Consistent with SBREFA and DOT policy, FMCSA conducted an initial regulatory flexibility analysis, published the analysis with the NPRM, and requested comments. Although FMCSA received numerous public comments on the NPRM for this rule, there were no comments specific to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file comments in response to the proposed rule. FMCSA subsequently reviewed the available information on the number of affected small entities and the impact of the rule on those small entities and presents the analysis and certification below.

Affected Small Entities

This final rule affects interstate CMV drivers and interstate motor carriers. CMV drivers, however, do not meet the definition of a small entity in section 601 of the RFA. Specifically, CMV drivers are considered neither a small business under section 601(3) of the RFA, nor a small organization under section 601(4) of the RFA.[23]

Under the RFA, as amended, motor carriers may be considered small entities based on the size standards defined by SBA to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).[24] This rule could affect motor carriers in many different industry sectors in addition to the Transportation and Warehousing sector (NAICS sectors 48 and 49); for example, the Construction sector (NAICS sector 23), the Manufacturing sector (NAICS sectors 31, 32, and 33), and the Retail Trade sector (NAICS sectors 44 and 45). Not all entities within these industry sectors will be impacted by this rule; therefore, FMCSA cannot determine the number of small entities based on the SBA size standards. However, FMCSA anticipates that the majority of entities in the Truck Transportation subsector (NAICS code 484) and the Transit and Ground Transportation subsector (NAICS Code 485) are motor carriers that will be affected by this rule. FMCSA used data from the 2017 Economic Census to determine the percentage of motor carriers with annual revenue at or below the SBA size standards.[25] The Economic Census sums the number of firms classified according to their NAICS code by ranges of annual revenue. FMCSA used the annual revenue ranges with the high end closest to the SBA thresholds to determine the percentage of freight and passenger carriers that meet the definition of an SBA small entity. As discussed below, the Agency estimates that 99.2 percent of trucking firms and 99.4 percent of passenger carriers are classified as small businesses. The SBA threshold for NAICS Code 484 is $30 million. For purposes of determining the percentage of trucking firms with annual revenue less than or equal to $30 million, the Agency considered the annual revenue for all truck transportation firms reported in the Economic Survey under NAICS Code 484. The Economic Survey revenue range closest to the SBA $30.0 million threshold includes all truck transportation firms with annual revenue ranging from $10.0 million to $24.9 million. The total number of truck transportation firms within the 8 ranges of annual revenue less than or equal to $30.0 million accounts for 99.2 percent of survey respondents. The Agency finds that this 99.2 percent is a reasonable proxy for the number of trucking firms with annual revenue equal to or less than the $30.0 million SBA threshold. The Agency used the same methodology to determine the percentage of passenger carriers that would be considered an SBA small entity. The SBA threshold for Transit and Ground Transportation firms (NAICS Code 485) is $16.5 million. For purposes of determining the percentage of passenger carriers with annual revenue less than or equal to $16.5 million, the Agency considered the number of passenger carriers in three NAICS Code subsectors: Charter Bus; Interurban Transportation and Rural Transportation; and School and Employee Transportation subsectors.[26] The Economic Census revenue range closest to the SBA $16.5 million threshold includes passenger carriers with revenue ranging from $5 million to $9.9 million. Passenger carriers with revenue less than or equal to $9.9 million account for 99.4 percent of survey respondents within the three

[20] Totals are a sum of unrounded components and therefore may not add up.

[21] A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

[22] Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996), 5 U.S.C. 601 note.

[23] Though individual CMV drivers are not small entities for purposes of the RFA, individual CMV drivers who are owner-operators are considered small businesses for purposes of the RFA. In addition, driver and motor carrier cost savings are estimated on a per driver basis using an estimate of the total driver population that includes owner-operators.

[24] Executive Office of the President, OMB. ''North American Industry Classification System.'' 2017. Available at *https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html* (last accessed Oct. 29, 2021).

[25] U.S. Census Bureau, *2017 Economic Survey,* Table EC1700SIZEREVEST, Available at *https://data.census.gov/cedsci/table?t=Value%20of%20Sales,%20Receipts,%20Revenue,%20or%20Shipments&n=485&tid=ECNSIZE2017.EC1700SIZEREVEST&hidePreview=* (last accessed Oct 15, 2021).

[26] Commuter rail, public transit systems, taxi, limousine, and special needs transportation that are included in Subsector 485 are excluded from the analysis.

subsectors. Thus, the Agency finds that 99.4 percent of passenger carriers with revenue less than or equal to $9.9 million is approximately the same percentage of those with annual revenue less than the $16.5 million SBA threshold.

Therefore, FMCSA concludes that this rule will impact a substantial number of small entities.

Impact

The Agency rescinds § 391.27 because it duplicates drivers' conviction information contained on MVRs that motor carriers currently receive annually pursuant to § 391.25. The elimination of § 391.27 results in cost savings to motor carriers because they will no longer have to file the lists and certificates in driver qualification files. FMCSA estimates a cost savings to all motor carriers of $1.56 million annualized at a 7 percent discount rate from time savings (2 minutes per driver list of traffic convictions or certificate of no convictions) at an hourly wage rate of $29 per hour.

In order to determine if this impact would be significant, FMCSA considers the impact as a percentage of annual revenue and estimates the impact to be significant if it surpasses 1 percent of revenue. For each affected driver, an individual motor carrier will save an estimated $0.87 ($29 × .03 hours). The motor carrier would need to have annual revenue below $87 ($.87 ÷ 0.01) in order for this impact to reach the threshold of significance. It is not possible to determine the maximum number of drivers who would be affected at a given motor carrier in any 1 year. For illustrative purposes, FMCSA depicts the impact if a motor carrier employed 15 affected drivers. The annual opportunity cost savings would be $13.05 ($29 × .03 hours × 15 drivers), and the motor carrier would need to have annual revenues of equal to or less than $1,305 for the impact to be considered significant. FMCSA considers it unlikely that a motor carrier would be able to operate with such low revenues in light of the sizeable expenses to own and maintain CMVs and support employees. The impact of this rule increases linearly with the number of affected drivers (*i.e.,* for each affected driver, the impact increases by $0.87 per year); however, FMCSA does not anticipate that this rule will result in a significant impact on small motor carriers regardless of the number of affected drivers per motor carrier.

Section 391.25, as revised, requires motor carriers to request MVRs annually from every licensing authority where a driver holds or has held a CMV operator's license or permit in the past year. In addition, a conforming change is made to § 391.23(a) to require motor carriers to request MVRs from all driver's licensing authorities when hiring new drivers. As discussed earlier in the rule, the changes to §§ 391.23 and 391.25 do not increase costs to motor carriers.

Therefore, I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of SBREFA,[27] FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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. 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 $170 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2020 levels) or more in any 1 year. Although this final rule does not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

[27] Public Law 104–121, 110 Stat. 857, 558 (Mar. 29, 1996), 5 U.S.C. 601 note.

F. Paperwork Reduction Act (Collection of Information)

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires that an agency consider the impact of paperwork and other information collection burdens imposed on the public. An agency is prohibited from collecting or sponsoring an information collection, as well as imposing an information collection requirement, unless it displays a valid OMB control number (5 CFR 1320.8(b)(3)(vi)).

This final rule revises the existing Driver Qualification Files ICR (OMB Control Number 2126–0004), which expires April 30, 2023. FMCSA revises the ICR due to the Agency's development of this rule and to provide updated information on the driver population, driver turnover rates, and driver wage rates. FMCSA seeks approval for the revision and renewal of the currently approved information collection. FMCSA will submit a copy of the final rule to OIRA at OMB for review and approval of the information collections.

Title: Driver Qualification Files.

OMB Control Number: 2126–0004.

Type of Review: Revision and renewal of a currently approved information collection.

Summary: The final rule eliminates § 391.27, which requires that a driver operating a CMV must complete a list of convictions for traffic violations or a certification of no traffic convictions and submit the list or certification to the driver's employing motor carrier on an annual basis. The motor carrier must file the list or certification in the driver's qualification file. The elimination of § 391.27 also eliminates its related information collections in IC–2.1 (driver submits list of violations to motor carrier) and IC–2.2 (motor carrier files list of violations in driver qualification file).

The requirements of § 391.27 are largely duplicative of the requirements in § 391.25 that motor carriers must make an annual inquiry to States to request a driver's MVR and file the MVR in the driver's qualification file. Because § 391.25 is currently limited to inquiries for drivers licensed by a State, this rule modifies § 391.25 to require motor carriers to request a driver's MVR from each licensing authority that issued the driver a license. This change requires motor carriers to request MVRs from Canadian and Mexican driver's licensing authorities. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA makes conforming changes to § 391.23 to require motor carriers to request

MVRs from driver's licensing authorities, instead of States, for the 3 years preceding the date of employment when hiring a driver. FMCSA also changes § 391.21 to require each driver to provide on the employment application the issuing driver's licensing authority, instead of State, of each unexpired CMV operator's license or permit that has been issued to the driver so that motor carriers can make the required inquiries under § 391.23.

The changes to §§ 391.21, 391.23, and 391.25 do not increase paperwork burdens. This is because MCMIS, the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers (both foreign and domestic). Also, for purposes of information collection burden calculation, the median fee for obtaining an MVR from either a foreign or a domestic authority is the same.

FMCSA uses the MCMIS driver population data, which currently includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Therefore, although this rule institutes new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State, the current OMB-approved information collections for §§ 391.23 and 391.25 in the Driver Qualification Files ICR already include reporting and recordkeeping costs incurred by motor carriers to request MVRs for such drivers. Similarly, the current OMB-approved information collection for § 391.21 already includes reporting and recordkeeping costs incurred by drivers to prepare and submit employment applications.

The changes to §§ 391.23 and 391.25 also do not increase costs to motor carriers resulting from fees paid to Canadian and Mexican driver's licensing authorities to obtain MVRs. As set forth in section 13 of the supporting statement, FMCSA has surveyed fees charged by driver's licensing authorities and third-party processing companies in Canada and has determined that they are consistent with those to obtain MVRs from States. There is no fee to obtain MVRs in Mexico.[28]

Response to comments: The NPRM served as the 60-day notice for the ICR revision and requested public comment on the information collection (85 FR 80745, Dec. 14, 2020). With respect to the information collections associated with § 391.27, a driver commented that the driver recently filled out the required paperwork and that it took about 1 minute.[29] FMCSA estimates that it takes drivers 2 minutes to complete a list of convictions or certificate of no convictions. One motor carrier commented that complying with § 391.27 is a ''laborious task'' and that it takes the better part of a month to receive information from drivers.[30] A motor carrier Director of Safety commented that it is costly and time consuming to comply with § 391.27 and estimated the annual administrative burden to be in excess of 100 hours.[31] Five other commenters stated that complying with § 391.27 is a huge paperwork burden, time or labor intensive, or a significant burden on motor carriers.[32] FMCSA received no substantive comments in response to the NPRM regarding the paperwork burden relating to §§ 391.21, 391.23, and 391.25.

Burden estimates: The elimination of § 391.27 deletes IC–2.1 (driver submits list of violations to motor carrier) and IC–2.2 (motor carrier files list of violations in driver qualification file). The OMB-approved burden associated with IC–2.1 is 0.06 million hours and $2.16 million. The OMB-approved burden associated with IC–2.2 is 0.06 million hours and $1.74 million. Thus, the elimination of § 391.27 results in a paperwork burden reduction of 0.12 million hours and $3.9 million for drivers and motor carriers. However, these reductions are offset in the proposed burden due to increases in the driver population, the driver turnover rate, and driver wage rates. The OMB-approved burden for the ICR is 12.27 million hours at a cost of $350.64 million. The proposed burden for the ICR is 14.23 million hours at a cost of $426.16 million.

The revised total annual estimated burden associated with the Driver Qualification Files ICR that reflects the elimination of IC–2.1 and IC–2.2 and the updated driver population, driver turnover rate, and driver wage rate information is as follows.

Estimated number of respondents: 7.52 million (6.92 million drivers + 0.60 million motor carriers).

Estimated responses: 113.97 million.

Frequency: Responses may be random, annual, or when hiring a driver.

Estimated burden hours: 14.23 million.

Estimated cost: $426.16 million.

Additional information for the assumptions, calculations, and methodology summarized above is provided in the supporting statement. The supporting statement is available in the docket for this rulemaking.

Request for Comments: FMCSA asks for comment on the information collection requirements of this rule, as well as the revised total estimated burden associated with the information collections. Specifically, the Agency asks for comment on: (1) Whether the proposed information collections are necessary for FMCSA to perform its functions; (2) how the Agency can improve the quality, usefulness, and clarity of the information to be collected; (3) the accuracy of FMCSA's estimate of the burden of this information collection; and (4) how the Agency can minimize the burden of the information collection.

If you have comments on the collection of information, you must submit those comments as outlined under **ADDRESSES** at the beginning of this final rule.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this rule does not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act,

[28] Although Mexican motor carriers do not pay a fee to obtain MVRs, FMCSA continues to include the cost for consistency and administrative convenience.

[29] See Ben Hooser comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0024.*

[30] See anonymous comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0072.*

[31] See Adrian O'Hara comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0073.*

[32] See Portland General Electric comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0082,* anonymous comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0087,* anonymous comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0090,* TCA comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0097,* and Heritage-Crystal Clean, LLC comment available at *https://www.regulations.gov/comment/FMCSA-2018-0224-0101.*

2005,[33] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002 [34] requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Agency has completed a Privacy Threshold Assessment to evaluate the risks and effects the rule has on collecting, storing, and sharing personally identifiable information. FMCSA determined that this rule does not create privacy risks to individuals. In addition, the Agency submitted the Privacy Threshold Assessment to DOT's Privacy Officer for review. The DOT Privacy Office also has determined that this rulemaking does not create privacy risk.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6.z. The content in this rule is covered by the categorical exclusions in paragraph 6.z.(1) regarding the minimum qualifications for individuals who drive CMVs, and in paragraph 6.z.(2) regarding the minimum duties of motor carriers with respect to the qualifications of their drivers. In addition, this rule does not have any effect on the quality of the environment.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, FMCSA amends 49 CFR chapter III as follows:

PART 385—SAFETY FITNESS PROCEDURES

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

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 2. Amend appendix B to part 385, section VII, by removing the entry for ''§ 391.51(b)(7)'' and adding an entry for ''§ 391.51(b)(6)'' in its place to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations.

* * * * *

§ 391.51(b)(6) Failing to maintain medical examiner's certificate in driver's qualification file (critical).

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 3. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 4. Amend § 390.5 as follows:

■ a. Lift the suspension of the section;

■ b. Revise the definition of ''motor vehicle record''; and

■ c. Suspend the section indefinitely.

The revision reads as follows:

§ 390.5 Definitions.

* * * * *

Motor vehicle record means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

* * * * *

■ 5. Amend § 390.5T by revising the definition of ''motor vehicle record'' to read as follows:

§ 390.5T Definitions.

* * * * *

Motor vehicle record means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 6. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

§ 391.11 [Amended]

■ 7. Amend § 391.11 by removing paragraph (b)(6) and redesignating paragraphs (b)(7) and (8) as paragraphs (b)(6) and (7), respectively.

■ 8. Amend § 391.21 by revising paragraph (b)(5) to read as follows:

[33] Public Law 108–447, 118 Stat. 2809, 3268 (Dec. 8, 2004), 5 U.S.C. 552a note.

[34] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), 44 U.S.C. 3501 note.

§ 391.21 Application for employment.

* * * * *

(b) * * *

(5) The issuing driver's licensing authority, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;

* * * * *

■ 9. Amend § 391.23 by revising paragraphs (a)(1) and (b) to read as follows:

§ 391.23 Investigation and inquiries.

(a) * * *

(1) An inquiry, within 30 days of the date the driver's employment begins, to each driver's licensing authority where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

* * * * *

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each driver's licensing authority required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from a driver's licensing authority required to submit this response, the motor carrier must document a good faith effort to obtain such information. The inquiry to a driver's licensing authority must be made in the form and manner each authority prescribes.

* * * * *

■ 10. Amend § 391.25 by revising paragraph (a) to read as follows:

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to each driver's licensing authority where the driver held a commercial motor vehicle operator's license or permit during the time period.

* * * * *

§ 391.27 [Removed and Reserved]

■ 11. Remove and reserve § 391.27.

■ 12. Amend § 391.51 as follows:

■ a. Revise paragraphs (b)(2) and (4);

■ b. Remove paragraph (b)(6) and redesignate paragraphs (b)(7) through (9) as paragraphs (b)(6) through (8), respectively;

■ c. Revise newly redesignated paragraph (b)(6)(iii);

■ d. Revise paragraph (d)(1);

■ e. Remove paragraph (d)(3) and redesignate paragraphs (d)(4) through (6) as paragraphs (d)(3) through (5), respectively; and

■ f. Revise newly redesignated paragraph (d)(3).

The revisions to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(2) A copy of the motor vehicle record received from each driver's licensing authority pursuant to § 391.23(a)(1);

* * * * *

(4) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

* * * * *

(6) * * *

(iii) If that driver obtained the medical certification based on having obtained a medical variance from FMCSA, the motor carrier must also include a copy of the medical variance documentation in the driver qualification file in accordance with paragraph (b)(7) of this section;

* * * * *

(d) * * *

(1) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

* * * * *

(3) The medical examiner's certificate required by § 391.43(g), a legible copy of the certificate, or, for CDL drivers, any CDLIS MVR obtained as required by paragraph (b)(6)(ii) of this section;

* * * * *

■ 13. Amend § 391.63 as follows:

■ a. Revise paragraphs (a)(3) and (4);

■ b. Remove paragraph (a)(5); and

■ c. Revise the first sentence of paragraph (b).

The revisions to read as follows:

§ 391.63 Multiple-employer drivers.

(a) * * *

(3) Perform the annual driving record inquiry required by § 391.25(a); or

(4) Perform the annual review of the person's driving record required by § 391.25(b).

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain the driver's name, the driver's social security number, and the identification number, type, and issuing driver's licensing authority of the driver's commercial motor vehicle operator's license. * * *

■ 14. Amend § 391.67 by revising paragraph (a) to read as follows:

§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.

* * * * *

(a) Section 391.11(b)(1) and (7) (relating to general qualifications of drivers);

* * * * *

■ 15. Amend § 391.68 by revising paragraph (a) to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

* * * * *

(a) Section 391.11(b)(1) and (7) (relating to general qualifications of drivers);

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Acting Administrator.

[FR Doc. 2022–04930 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 565, 566, 567, 586, and 591

[Docket No. NHTSA–2021–0006]

RIN 2127–AL77

Vehicle Identification Number (VIN) Requirements; Manufacturer Identification; Certification; Replica Motor Vehicles; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements an exemption program for replica motor vehicles manufactured or imported by low-volume manufacturers, as set forth in Section 24405 of the Fixing America's Surface Transportation Act (FAST Act). The FAST Act amended the National Traffic and Motor Vehicle Safety Act to direct the Secretary of Transportation (NHTSA by delegation) to exempt annually 325 replica motor vehicles manufactured or imported by low-volume manufacturers from Federal motor vehicle safety standards that apply to motor vehicles, but not standards that apply to motor vehicle equipment. To implement the

exemption program and the procedural mandates of the FAST Act, this final rule establishes a new part 586 and amends VIN requirements in part 565, manufacturer identification requirements in part 566, manufacturer certification requirements in part 567, and importation requirements in part 591.

DATES:

Effective Date: This rule is effective March 9, 2022.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received no later than April 25, 2022.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to *http://www.regulations.gov,* including any personal information provided. To facilitate social distancing due to COVID–19, please email a copy of the petition to *nhtsa.webmaster@dot.gov.*

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512). To facilitate social distancing due to COVID–19, NHTSA is treating electronic submission as an acceptable method for submitting confidential business information (CBI) to the Agency under 49 CFR part 512. *https://www.nhtsa.gov/coronavirus.*

FOR FURTHER INFORMATION CONTACT: For further information you may contact Ms. Callie Roach, telephone 202–597–1312, *Callie.Roach@dot.gov;* Mr. Daniel Koblenz, telephone 202–366–5329, *Daniel.Koblenz@dot.gov;* Office of the Chief Counsel. The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

This final rule establishes an exemption program for replica motor vehicles manufactured or imported by low-volume manufacturers, as directed by Section 24405 of the FAST Act (Pub. L. 114–94). The National Traffic and Motor Vehicle Safety Act (Safety Act) [1] states that ''a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment'' unless the vehicle or equipment complies with all applicable Federal motor vehicle safety standards (FMVSS) in effect on the date of manufacture, unless covered by a nonapplication provision or exempted under the Safety Act.[2] Section 24405 of the FAST Act, entitled, ''Treatment of Low-Volume Manufacturers,'' amended 49 U.S.C. 30114 (Special exemptions) by adding a new subsection (b) that mandated the creation of a new exemption program for replica vehicles. Subsection (b) requires the Secretary of Transportation (NHTSA by delegation) to exempt ''325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer'' from 49 U.S.C. 30112(a) regarding FMVSS ''applicable to motor vehicles and not motor vehicle equipment.''

Section 30114(b) requires low-volume manufacturers seeking an exemption to register with NHTSA and gives the agency a limited period to review and either approve or deny an application for registration before the application is deemed approved. It requires that NHTSA require the manufacturers to affix permanent labels to the exempted motor vehicles to identify the vehicle as a replica and provide other information determined necessary by NHTSA. The provision also requires annual reporting to NHTSA and directs NHTSA to maintain an up-to-date list of registrants and a list of the makes and models of exempted motor vehicles at least annually (and publish such list in the **Federal Register** or on NHTSA's website). The FAST Act amendments direct that the 325-vehicle production authorization is limited to the calendar year in which the exception is granted, and that unused production capacity (*i.e.,* the difference between the 325-vehicle authorization and actual vehicle production) does not accrue and carry forward into subsequent calendar years, but expires at the end of the calendar year in which it was granted. The provisions authorize NHTSA to revoke an existing registration based on a failure to comply with applicable requirements, or a finding by the agency of either a safety-related defect or unlawful conduct that poses a significant safety risk.

This final rule implements the replica motor vehicle exemption program mandated under 24405 of the FAST Act. NHTSA published the notice of proposed rulemaking (NPRM) preceding this final rule on January 7, 2020 (85 FR 792, Docket No. NHTSA–2019–0121).[3] NHTSA proposed to establish the replica motor vehicle exemption program in 49 CFR part 586, and proposed amendments to the agency's regulations for VIN requirements (49 CFR part 565), manufacturer identification (part 566), and

[1] 49 U.S.C. Chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*).

[2] 49 U.S.C. 30112.

[3] For a detailed summary of the FAST Act provisions, *see* the NPRM, 85 FR at 793–794.

certification (part 567), to accommodate the exemption program.

As proposed in the NPRM, 49 CFR part 586 included the FAST Act definitions to define and adopt the exemption program, along with both procedural and substantive requirements to implement the FAST Act's mandates. The NPRM proposed to exempt low-volume manufacturers (that qualified for the replica program and registered with NHTSA) from the requirements of § 30112(a), thereby allowing for the production of up to 325 replica motor vehicles per year (hereafter ''covered replica vehicles'') per replica manufacturer. This exemption was to be conditioned on the replica manufacturer complying with all requirements of the program.

Under the NPRM, covered replica vehicles would be exempt from complying with the ''vehicle'' standards in effect on the date of manufacture of the replica vehicle that apply to new vehicles of the replica's type (passenger car, multipurpose passenger vehicle, truck, or bus), but would not to be exempt from ''equipment'' standards.[4] Thus, equipment would still be required to comply with any equipment-level FMVSS performance requirement in effect on the equipment's date of manufacture.

After reviewing the comments to the NPRM, NHTSA has adopted the majority of proposed provisions but has adjusted some aspects of the program based on the feedback received. The discussion in this preamble follows the overall outline of the NPRM and discusses, under each section, the proposed requirement, comments received, and NHTSA's decisions for this final rule.

Summary of Comments

NHTSA received 20 comments on the NPRM. The commenters included prospective replica vehicle manufacturers, suppliers, trade associations, consultants and individuals.[5] Commenters were generally supportive of the proposed rule, but some suggested changes to specific aspects of the NPRM. The significant comments are summarized below.

The FAST Act defines a replica vehicle as a vehicle ''intended to resemble the body'' of another motor vehicle that was manufactured at least 25 years before the replica. NHTSA proposed several requirements to implement this ''resemblance'' requirement in an objective manner, such as that a ''replica motor vehicle'' must have the same length, width, and height as the vehicle being replicated (hereafter, ''original motor vehicle''). In response, commenters, including potential replica motor vehicle manufacturers, suppliers, the Specialty Equipment Market Association (SEMA), Vehicle Services Consulting, Inc. (VSCI), and several individuals, urged NHTSA to provide more flexibility in implementing the resemblance requirement. Many commenters argued that NHTSA should allow the dimensions of the replica motor and the original motor vehicle to deviate by up to 10 percent. Commenters pointed to the definition of a ''specialty motor vehicle'' used by the California Air Resources Board (CARB), which provides such deviation. The NPRM also defined ''body'' as including any part of the vehicle that is not part of the chassis or frame. Some potential replica manufacturers suggested a vehicle's body should be limited to the body's exterior design and appearance.

Several commenters discussed the provisions of the NPRM that NHTSA proposed for the purpose of ensuring intellectual property (IP) rights and ownership were adequately protected. The NPRM proposed a requirement that manufacturers submit documentation to support the manufacturer's assertion that the replica vehicle is intended to resemble the original. The Alliance for Automotive Innovation (Alliance) supported the proposal, asserting that public disclosure of the documentation ''will permit intellectual property owners to take action to protect their rights if they believe that the applicant does not have the necessary authorizations.'' Other commenters suggested that NHTSA simply require that replica motor vehicle manufacturers certify or declare that they have all necessary rights to produce a replica motor vehicle, rather than require them to provide the underlying documentation. NHTSA also received comments on whether replica vehicles should be required to reproduce logos and emblems from the original vehicle.

Comments were mixed on whether manufacturers of incomplete vehicles should be eligible for the replica program, and how NHTSA should apply the FAST Act exemption to vehicles produced in multiple stages. While commenters from industry, including SEMA, were supportive of allowing the use of incomplete vehicles in the replica manufacturing process, they also stated that replica manufacturers generally do not expect to produce their vehicles in more than one stage.

Several commenters questioned whether the procedural requirements in the NPRM relating to the automatic approval of replica manufacturers registrations were consistent with the FAST Act, which states that an application should be ''deemed approved'' if NHTSA does not respond to the application within 90 days.

Regarding labeling and disclosure requirements, some commenters believed it overly burdensome to require that the certification label list all the standards from which the replica motor vehicle is exempted. Some comments objected to the redundancy of having to provide temporary labels in addition to the statutorily-mandated labeling.

Several commenters addressed NHTSA's interpretation of the FAST Act's provisions regarding preemption of State titling and registration laws. Some commenters disagreed with NHTSA's interpretation that State titling and registration laws could require vehicles to be equipped with certain safety equipment.

Differences Between the NPRM and Final Rule

This final rule adopts most of the proposal but has revised or clarified several aspects in response to comments, as highlighted below. All changes, and others of a more minor nature, are discussed in the relevant sections of this final rule.

The main changes are:

- Registrants will not be required to submit actual documentation to demonstrate they own or have license to the intellectual property (IP) necessary to manufacture a replica motor vehicle. Instead, they must certify to this fact.
- A replica motor vehicle will not be required to maintain the exact dimensions of the original motor vehicle to meet the requirement that it ''resemble'' the original motor vehicle. A 10 percent leeway is provided. NHTSA is also not requiring that replica motor vehicles resemble not only the original vehicle's exterior, but also its interior.
- NHTSA has streamlined the regulatory text to clarify how NHTSA will process registrations, and how the Agency will address ''deemed approved'' registrations.
- This final rule reduces the amount of information replica manufacturers must disclose to members of the public, compared to the NPRM's proposal.

[4] Some of the FMVSS are ''vehicle'' standards that apply only to new completed vehicles as a unit and not to aftermarket components, some are ''equipment'' standards that apply to original and aftermarket items of equipment, and a few are both vehicle and equipment standards.

[5] NHTSA received three other comments, but they were either not substantive or outside the scope of this rulemaking.

NHTSA has also reconsidered its view of 49 U.S.C. 30114(b)(9), which states that the replica program shall not be construed to preempt, affect, or supersede State titling or registration laws or regulations.

II. Final Rule Decisions—General

a. Who qualifies for the exemption program as a low-volume manufacturer?

49 U.S.C. 30114(b)(1) limits the exemption to not more than 325 replica motor vehicles per year ''that are manufactured or imported by a low-volume manufacturer.'' NHTSA interpreted this provision in the NPRM to mean that replica vehicles must be produced by a low-volume manufacturer and that ''replica vehicles may only be imported by their fabricating low-volume manufacturer.'' [6] Further, NHTSA proposed that each low-volume manufacturer would be limited to importing 325 replica vehicles per year, regardless of the calendar year of manufacture.[7]

NHTSA stated that replica vehicles produced by a foreign low-volume manufacturer may only be imported by that specific registered low-volume manufacturer. NHTSA stated it interpreted the wording of the FAST Act provision in the same way NHTSA has interpreted the hardship exemption provision in 49 U.S.C. 30113, *i.e.,* as not authorizing the agency to grant hardship exemptions to entities that seek to import vehicles they did not produce.[8] NHTSA asserted that interpreting § 24405 of the FAST Act in the same manner is appropriate because both provisions recognize that small manufacturers are faced with unique financial challenges in meeting the FMVSS, and provide exemptions to alleviate this burden. NHTSA argued that by prohibiting an entity seeking to import replica motor vehicles from registering as a low-volume manufacturer of replica vehicles unless it is also the entity fabricating the replica vehicles would ensure that small importers are not permitted to import replica vehicles manufactured by large foreign manufacturers.

Comments Received

NHTSA received differing views on its proposal to allow only a fabricating manufacturer to register as a replica vehicle manufacturer and to import replica vehicles. The American Association of Motor Vehicle Administrators (AAMVA) and the Alliance supported NHTSA's proposal to ensure conformance to the 325 vehicles per manufacturer limit. SEMA, Caterham Cars Ltd. (Caterham) and ElectroMeccanica Vehicles Corp. (ElectroMeccanica) requested that NHTSA allow foreign fabricating replica manufacturers the option to assign one subsidiary or distributor to import and sell replica motor vehicles.

NHTSA Response

NHTSA has reconsidered the discussion in the NPRM and agrees with the commenters who argued that it is not necessary to limit the eligibility for the replica program to importers who fabricate the vehicles. There is no such prohibition in the FAST Act provisions [9] and the agency believes that including such a prohibition is not necessary to ensure conformance to the 325-vehicles per manufacturer cap. NHTSA believes that the general statutory definition for ''manufacturer,'' which covers both entities that manufacture motor vehicles and entities that import motor vehicles for resale, should apply.[10] This is to say, the definition does not stipulate that an importer must only import the vehicles they fabricate; importers have been permitted to import vehicles produced by other entities.

NHTSA does not believe it is necessary to require a low-volume foreign manufacturer to use a *single* low-volume entity to import its replica motor vehicles, provided limits are in place on the importation. The total production of that low-volume foreign manufacturer may not exceed 5,000 vehicles annually (*i.e.,* it must be a low-volume manufacturer), its importers must all be ''low-volume'' (importing or producing fewer than 5,000 vehicles annually), and the total number of replica motor vehicles imported into the U.S. by *all* of its U.S.-based importers *combined* cannot exceed 325 vehicles.

b. Number of Permitted Exempted Vehicles

The FAST Act exempts ''not more than 325 replica motor vehicles per year that are manufactured or imported by a [registered] low-volume manufacturer.'' [11] NHTSA proposed provisions implementing this provision.

Comments Received

Three comments concurred with the agency's statements about the 325-vehicle cap. VSCI asked NHTSA to clarify that the exemption limit did not apply in two situations. First, VSCI suggested that the limit did not apply to replica motor vehicles produced by a manufacturer for sale outside the United States, if the total annual production for the manufacturer did not exceed 5,000. Second, VSCI asked whether the manufacturer could produce similar vehicles in excess of the 325-limit if those vehicles were certified as complying with all applicable FMVSS. The National Automobile Dealers Association (NADA) supported the 325-limit but cautioned that manufacturers should not be allowed to evade this limit through multiple importers, shell corporations or multi-stage manufacturing processes. An individual noted that, where multiple manufacturers planned to produce replica motor vehicles based on the same vehicle, the 325-limit should apply to the total vehicles produced by all such manufacturers. The individual did not suggest how NHTSA should allot the vehicles among the manufacturers in such a scenario.

Agency Response

Under 49 U.S.C. 30114(b), a replica motor vehicle manufacturer must be a low-volume manufacturer. Under § 30114(b)(7)(A), the term ''low volume manufacturer'' means a motor vehicle manufacturer, other than a person who is a registered importer, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles. Thus, following this definition, NHTSA will count the vehicles produced by parent and subsidiary companies of an entity claiming to be a low-volume manufacturer to see if the entity qualifies as a low-volume manufacturer. Under section 30114, individual low-volume manufacturers are limited to not more than 325 replica motor vehicles per year. NHTSA agrees that a replica motor vehicle manufacturer must not be permitted to exceed the 325-vehicle production cap using affiliated parent or

[6] *See,* 85 FR 795. Interpreting the statute to allow replicas to be produced by foreign manufacturers that do not qualify as low-volume manufacturers and then imported by low-volume manufacturers is contrary to Congress's intent to create an exemption program designed to address the unique financial challenges small manufacturers face.

[7] A low-volume manufacturer would not be permitted to import more than 325 replica vehicles into the U.S. in a single calendar year, regardless of whether those vehicles were fabricated over the course of two calendar years.

[8] See letter to Mr. Bill Cox (March 24, 1997) available at *https://isearch.nhtsa.gov/files/kill.ztv.html.*

[9] However, 49 U.S.C. 30114(b)(2) provides that ''[NHTSA] shall establish terms that ensure that no person may register as a low-volume manufacturer if the person is registered as an importer under section 30141 of this title.''

[10] 49 U.S.C. 30102(a)(6).

[11] 49 U.S.C. 30114(b)(1) and (2).

subsidiary companies, as that would be contrary to the provisions of the exemption. The annual production cap for replica motor vehicle manufacturers applies to the registered entity as well as to productions by parent or subsidiary companies and manufacturers under common ownership. To be clear, a replica motor vehicle manufacturer cannot exceed the production cap using affiliated parent or subsidiary companies.

A low-volume manufacturer is permitted to produce a variety of replica motor vehicle models, so long as the cumulative production for the manufacturer is not more than 325 replica motor vehicles per year. In such a case, the low-volume manufacturer must state in all applications how it has allocated the 325 vehicles it produced among the different models.

As noted above, the Safety Act treats U.S.-based importers that are subsidiaries of foreign manufacturers as manufacturers. Thus, importers that are subsidiaries of foreign manufacturers are limited to importing up to a total of 325 replica motor vehicles across all connected companies. This assumes, of course, that the importer and the foreign manufacturer are both low-volume manufacturers.

Finally, VSCI's understanding is correct that the cap does not apply to replica motor vehicles produced by a low-volume manufacturer that are sold outside the United States. Also, the 325 cap does not include vehicles produced by a low-volume manufacturer that are certified as compliant with all applicable FMVSS, since compliant vehicles do not require an exemption to be sold in the United States. (If the manufacturer produces more than 5,000 motor vehicles annually, however, it would not be a low-volume manufacturer, and would not qualify for this replica vehicles exemption program.)

c. Vehicles Built in Two or More Stages

NHTSA requested comment on whether the replica vehicle program should exclude vehicles manufactured in two or more stages. The agency was concerned that some of the proposed requirements may be impossible to meet unless the replica vehicle is manufactured in a single stage. For instance, NHTSA identified a potential incompatibility between the multistage manufacturing process and a requirement that the vehicle's vehicle identification number (VIN) identify the vehicle as a replica. NHTSA sought to ensure replica vehicles are properly identified as replicas in their VINs, and that the VIN denote the make, model, and model year of the original vehicle. NHTSA was concerned that those requirements could not be met by vehicles produced in two or more stages because, under NHTSA's VIN regulation, each vehicle manufactured in two or more stages has a VIN assigned by the incomplete vehicle manufacturer.[12] NHTSA noted that it was unlikely an incomplete vehicle manufacturer would know the make, model, and model year of the vehicle being replicated, so the VIN would be missing this information.

NHTSA also noted its belief that replica manufacturers would not, as a practical matter, be able to take advantage of multistage manufacturing, because NHTSA interpreted the FAST Act as requiring that all manufacturers involved in the fabrication of a vehicle manufactured in more than one stage would need to be low-volume manufacturers. As incomplete vehicle manufacturers are typically *not* low-volume manufacturers, producing a replica vehicle through the multistage manufacturing process did not seem feasible. As an alternative to excluding multistage manufacturing from the exemption program, NHTSA sought comment on allowing joint registration submissions from two or more manufacturers wishing to manufacture the replica vehicle. NHTSA envisioned that, under a joint registration program, the incomplete vehicle manufacturer would know at the onset of manufacturing the make, model, and model year of the vehicle the replica resembles, and thus would be able to code information about the finished replica vehicle into the VIN. However, NHTSA did not propose any regulatory text that would facilitate such a joint registration program.

Comments Received

NHTSA received divergent views on whether replica motor vehicles should be required to be manufactured in a single stage. The AAMVA, the National Truck Equipment Association (NTEA) and the Alliance supported the proposal to exclude multistage manufacturing. AAMVA noted that it is essential to tie the VIN to the manufacturer at each stage of manufacturing if NHTSA decides to allow multi-stage manufacturing. NTEA agreed that most multistage manufacturers would not qualify as low volume manufacturers and that ensuring compliance across multiple manufacturers would be difficult. VSCI supported NHTSA's alternative to allow joint registrations for incomplete/intermediate vehicle manufacturers wishing to produce or import replica motor vehicles.

Calloway and SEMA noted that current replica vehicle manufacturing practices typically do not involve producing vehicles in more than one stage. These commenters describe a process where replica vehicle manufacturers purchase a subassembly from a supplier consisting of an assemblage of parts (referred to as a ''rolling chassis''). The subassembly does not include an engine, and therefore does not meet NHTSA's definition of an incomplete vehicle.[13] The commenters asked for clarification that the agency does not consider a vehicle manufactured from a rolling chassis to be a vehicle produced in more than one stage.

Finally, other commenters, while agreeing that multistage manufacturing of replica vehicles is not currently the norm, urged NHTSA to allow multistage manufacturing as an option. MOKE USA (MOKE) specifically discussed the economic benefits that large-scale manufacturing offered and indicated that replica vehicle manufacturers could not benefit from these economies if multistage manufacturing were not a possibility. Edelbrock LLC also commented that the regulation should not require incomplete vehicle manufacturers supplying components to replica vehicle manufacturers to be small manufacturers.

Agency Response

After considering the comments, NHTSA has decided to establish terms that make available the replica vehicle exemption only to replica motor vehicles produced in a single stage. As explained above, NHTSA originally raised for comment a prohibition on the multistage manufacturing of replica vehicles out of a concern that it would not be feasible for incomplete vehicle manufacturers to code information identifying a vehicle as a replica into the vehicle's VIN. Incomplete vehicle manufacturers are required to encode the vehicle type into the VIN, and NHTSA did not think it probable that the incomplete vehicle manufacturer would know, when it assigned the VIN, that the final-stage manufacturer would be producing a replica vehicle. NHTSA has strong interests in having the VIN show that the vehicle is a replica to enable the agency to enforce the 325-vehicle annual production cap, and to examine State and police crash data

[12] 49 CFR 565.13(a). See also 49 CFR 567.3 for definitions of ''incomplete vehicle,'' ''incomplete vehicle manufacturer,'' ''final-stage manufacturer,'' and other terms relevant to this discussion.

[13] 49 CFR 567.3.

files in the future (which identify vehicles by VINs) to ascertain the involvement of replica vehicles in crashes and in crashes involving injury or fatality (and, possibly, the circumstances involving the crash and the mechanisms involved in injury outcome).

The comments NHTSA received did not alleviate the agency's concern about the ability of incomplete vehicle manufacturers to encode replica vehicle VINs properly. Commenters validated the notion that such a system could work if there were a complex and reliable coordination between a final-stage replica manufacturer and the incomplete vehicle manufacturer to ensure the VIN properly indicates a replica vehicle when the final-stage manufacturer obtains the incomplete vehicle. (This coordination concept was somewhat similar to the ''joint registration'' arrangements NHTSA envisioned in the NPRM when the agency discussed allowing joint registrations of incomplete/intermediate/final vehicle manufacturers wishing to produce replica motor vehicles.) However, commenters did not provide information on how such a system could be enforced by NHTSA, given the complex administrative and recordkeeping problems it would create for both NHTSA and the replica industry. Moreover, as we noted above, the commenters' reception to allowing multistage-manufactured replica vehicles was lukewarm, with industry groups and potential manufacturers not opposed to the idea, but not strongly supportive either. Apparently, as evident from the comments, this was because prospective replica manufacturers plan not to manufacture vehicles (in multiple stages) using incomplete vehicles but instead plan to manufacture the vehicles using ''rolling chasses,'' where they assemble the vehicle out of parts not involving an incomplete vehicle.[14] Given that replicas will likely be produced other than in a multistage manufacturing process, and given NHTSA's concerns that the manufacture of replica vehicles in more than one stage might not produce crucial information the agency needs to oversee the safety of replica vehicles, we have decided, at this stage of the exemption program, that replica vehicles must be produced in a single stage.

Moreover, NHTSA believes that, as a practical matter, there is an inherent inconsistency between the multistage manufacturing process and the FAST Act exemption. As discussed in the NPRM, the agency interpreted the FAST Act to require *all* manufacturers involved in the manufacture of a replica vehicle to be low-volume manufacturers. As incomplete vehicle manufacturers are usually large manufacturers, we do not believe replica vehicles using incomplete vehicles would qualify for the replica vehicle exemption. Further, from a safety standpoint it did not make sense to exempt replica vehicles that use incomplete vehicles produced by large manufacturers, as the large manufacturers have the resources to produce incomplete vehicles that could be made into vehicles that could conform to braking and other vehicle safety standards. While some commenters argued that NHTSA should permit the multistage manufacture of replica vehicles, they supported the multistage manufacturing of the vehicles primarily for the potential economic benefits of doing so, and did not explain how the multistage manufacturing process is consistent with the Safety Act. Given the difficulty in administering VIN requirements for incomplete replica vehicles, the plans of the replica industry to use rolling chasses and not incomplete vehicles to produce replica vehicles, and the fact that incomplete vehicle manufacturers are not low-volume manufacturers, NHTSA has decided to require that replica vehicles must be manufactured in a single stage. NHTSA has adopted a definition of ''replica motor vehicle'' to reflect this decision.

III. Definitions

The provisions in the FAST Act directing this exemption program define the terms ''low-volume manufacturer'' and ''replica motor vehicle.'' To facilitate implementation of the program, NHTSA proposed to define the term ''replica motor vehicle manufacturer'' as ''a low-volume manufacturer that is registered as a replica motor vehicle manufacturer pursuant to the requirements in this part.''

a. Low-Volume Manufacturer

Section 30114(b)(7)(A) defines ''low-volume manufacturer'' as: ''a motor vehicle manufacturer, other than a person who is registered as an importer under section 30141 of this title, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.'' Since several of NHTSA's existing regulations already use the term ''low-volume manufacturer,'' and, in some cases, define the term differently than the FAST Act provision, NHTSA proposed that part 586 define ''low-volume manufacturer'' by simply referring to 49 U.S.C. 30114(b)(7). Thus, the proposed definition[15] stated: ''*Low-volume manufacturer* is defined in 49 U.S.C. 30114(b)(7).''

Comments Received

NHTSA received several comments suggesting that we clarify aspects of the ''low-volume manufacturer'' term. (We addressed related issues in the section above titled, ''Who qualifies for the exemption program as a low-volume manufacturer.'') Some commenters believed that the regulatory text of part 586 should communicate the production limits set by the FAST Act so that the meaning of the term would be clearer on the face of the regulation. Some commenters believed the regulatory text should specify that the limit of 325 vehicles per year cannot be evaded through multiple subsidiaries. VSCI suggested NHTSA should clarify that low-volume manufacturers can produce or import up to 325 replica motor vehicles per year, regardless of how many replica vehicles the manufacturer produces outside of the U.S., as long as the total number of vehicles produced worldwide is less than 5,000. Some commenters believed the regulatory text should be clarified as it applies to foreign manufacturers who could have more than one U.S.-based subsidiary, or to domestic manufacturers who own multiple subsidiaries. Edelbrock suggested that NHTSA clarify that suppliers to low-volume manufacturers are not limited to supporting only 325 replica vehicles per year. SEMA, VSCI, and Caterham commented that U.S.-based subsidiaries of foreign manufacturers should be permitted to import replica motor vehicles, in addition to the foreign manufacturer itself.

NHTSA Response

After considering the comments, NHTSA has included regulatory text defining ''low-volume manufacturer'' and clarifying aspects of the term. NHTSA has responded to several of the comments in the above-mentioned section. The final rule regulatory text specifies that the 325-vehicle limit, or ''cap,'' applies across all subsidiaries owned by a single manufacturer. That is, as long as the total global production of the connected subsidiary manufacturers does not exceed 5,000

[14] NHTSA does not consider a vehicle manufactured from a rolling chassis to be a vehicle produced in more than one stage.

[15] 85 FR 819.

vehicles annually, the connected manufacturers that wish to register as replica vehicle manufacturers may all do so, so long as their registrations note the connections and allocate (and identify to NHTSA) the 325-cap between the manufacturers. All connected subsidiary manufacturers must be low-volume manufacturers and must, cumulatively, produce no more than 325 replica vehicles annually. A foreign low-volume manufacturer seeking to have its replica motor vehicles imported into the United States is only permitted to have up to 325 replica motor vehicles imported in total. U.S.-based subsidiaries of foreign low-volume manufacturers are treated the same as replica vehicle manufacturers sharing common ownership, *i.e.,* they must be low-volume, must register with NHTSA and must explain to the agency the connections to each other and allocate (and identify to NHTSA) the 325-cap among themselves. NHTSA emphasizes that the statute prohibits an entity from being a registered importer under 49 U.S.C. 30141 and registering as a replica motor vehicle manufacturer.

For purposes of this final rule, NHTSA will use the terms ''replica motor vehicle manufacturer,'' ''replica manufacturer,'' ''applicant'' and ''registrant'' interchangeably to mean a low-volume manufacturer that is or seeks to be registered under part 586.

b. Replica Motor Vehicle

The FAST Act defines a ''replica motor vehicle'' as a motor vehicle produced by a low-volume manufacturer that (i) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle; and (ii) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.[16]

NHTSA's proposed definition for ''replica motor vehicle'' largely tracked the statutory definition, but included a few minor modifications to emphasize that replica motor vehicles must be manufactured by a replica manufacturer and that production is limited to 325 replica motor vehicles in that calendar year.[17] NHTSA also proposed requirements to ensure that a replica vehicle meets the requirement that it be intended to resemble the original motor vehicle.[18] In addition, NHTSA addressed the provision relating to IP rights associated with the original motor vehicle.

1. Meaning of the Term ''Resemble''

The FAST Act provides that a replica vehicle is one ''intended to resemble the body'' of another motor vehicle that was manufactured at least 25 years before the replica. NHTSA proposed requirements to give objective meaning to ''intended to resemble.'' NHTSA explained in the NPRM[19] that the agency would interpret the term ''resemble'' as requiring the same height, width, and length of the original motor vehicle. NHTSA incorporated this interpretation of the term ''resemble'' into the proposed registration requirements to require manufacturers to submit documentation to support that the replica vehicle is ''intended to resemble'' the original vehicle by demonstrating that the replica vehicle has the same length, width, and height as the original, including images of the original vehicle and design plans for the replica vehicle. The NPRM did not specify that the replica vehicle must incorporate the original motor vehicle's logos and emblems to ''resemble'' the underlying vehicle.

Comments Received

Thirteen commenters argued that NHTSA's view that a replica motor vehicle must have the same length, width and height as the original vehicle was overly restrictive and burdensome. In addition to making arguments about the plain language meaning of the word ''resemble,'' some were concerned that requiring a replica motor vehicle to have the same dimensions as the original motor vehicle would make it more difficult for replica vehicle manufacturers to incorporate new safety features, use off-the-shelf components and/or components that comply with equipment FMVSS, or make replica motor vehicles more fuel efficient. Some potential replica motor vehicle manufacturers claimed that they had made significant business investments premised on the assumption that NHTSA would permit some leeway in the dimensions of replica motor vehicles. Most commenters suggested that part 586 should be consistent with the California Air Resources Board (CARB) definition for a ''specialty produced motor vehicle'' (SPMV). The SPMV definition used by CARB states that a SPMV resembles another motor vehicle ''on an overall 1:1 scale (±10 percent) of original body lines, excluding roof configuration, ride height, trim attached to the body, fenders, running boards, grille, hood or hood lines, windows, and axle location.'' The commenters argued that adopting a 10 percent leeway would address the various safety and economic concerns they raised.

NHTSA Response

After considering the comments, NHTSA agrees that the proposed interpretation of ''resemble'' (requiring a replica motor vehicle maintain the exact dimensions of the original motor vehicle) was too restrictive. While objectivity is crucial, NHTSA agrees that the statute's use of the word ''resemble,'' as opposed to a more stringent term (*e.g.,* ''identical''), indicates Congress's intent to allow some leeway in the appearance of a replica motor vehicle. Providing replica motor vehicles with a 10 percent margin recognizes the practical difficulties of manufacturing vehicles on a low-volume basis to specified physical dimensions in light of technological developments and equipment requirements.

While NHTSA is allowing for some variation in the dimensions of replica vehicles as compared to the original vehicle, the agency is not strictly adopting a ±10 percent cutoff as the accepted tolerance. This is because there may be instances where variation greater than 10 percent may be warranted (*e.g.,* to allow for modern safety features). NHTSA seeks to avoid a cutoff that necessitates the agency's having to deny an application or find a noncompliance automatically when seeing a difference slightly outside of the 10 percent margin. Thus, the final rule allows a 10 percent tolerance in the dimensional differences between the original vehicle and the replica vehicle without need for further justification. The final rule also provides a means by which replica manufacturers may seek approval for dimensional differences that exceed10 percent, but such proposed designs will be critically examined by NHTSA. Differences deemed unwarranted will be grounds for NHTSA's denying the registration on the finding the vehicle does not qualify as a replica vehicle.

Whether a replica motor vehicle sufficiently ''resembles'' an original motor vehicle is a matter NHTSA will decide on an individualized basis and in its discretion, taking into account the overall appearance of the vehicle. The closer a replica motor vehicle tracks the original dimensions, the more likely it is that NHTSA will determine the

[16] 49 U.S.C. 30114(b)(7)(B).

[17] 85 FR 819.

[18] *Id.*

[19] 85 FR 796.

vehicle is eligible for, or has been produced in conformance with, an exemption under 49 CFR part 586. To be clear, the FAST Act creates an exemption program designed to allow historic models to be replicated in a less costly way by low-volume manufacturers. NHTSA does not interpret ''resemble'' in a manner in that would allow vehicles that are merely *inspired* by older vehicles to be built, or otherwise allow for artistic license to create vehicles that merely *remind* the public of past automotive heritage.

2. Meaning of the Term ''Body''

NHTSA also discussed in the NPRM [20] its tentative determination that the term ''body'' meant any part of the vehicle that is not part of the chassis or frame, which would include, but would not be limited to, a vehicle's exterior sheet metal and trim, the passenger compartment, trunk, bumpers, fenders, grill, hood, interior trim, lights and glazing. NHTSA based this interpretation on the agency's definition of ''body type'' in 49 CFR 565.12, which is defined as the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo-carrying features and the roofline (*e.g.,* sedan fastback, hatchback). Because this definition references both exterior and interior features, NHTSA interpreted ''body'' as including both exterior and interior features as well, such that merely replicating the exterior features of the vehicle may not be sufficient.

Comments Received

Five commenters (SEMA, VSCI, and three potential replica motor vehicle manufacturers) believed NHTSA incorrectly interpreted the term ''body'' in the NPRM. According to these commenters, ''body'' is a term of art in the automotive industry, which refers only to a vehicle's exterior design and appearance and does not include interior features. They believe NHTSA should align its interpretation of ''body'' with the definition used by industry.

NHTSA Response

NHTSA agrees with the commenters that the agency's tentative interpretation of ''body'' in the NPRM was too broad. Given that the intent of the replica vehicle statute is to permit the sale of vehicles with an outward appearance that looks like a motor vehicle sold at least 25 years ago, the only aspects of the vehicle that would be covered by the term ''body'' should be those that affect the outside appearance of the replica motor vehicle. This would not cover the interior portions of the replica motor vehicle, such as the passenger compartment, except to the extent that their design affects the outside appearance of the vehicle. NHTSA makes this decision also to facilitate replica vehicle manufacturers' efforts to incorporate new safety features into the body of their vehicles, and to use off-the-shelf components and/or components that comply with the equipment FMVSS.

3. Prototypes

The NPRM proposed the replica vehicle must resemble the body of another motor vehicle that was manufactured ''for consumer sale'' not less than 25 years before the manufacture of the replica motor vehicle. NHTSA asserted its belief [21] that the provision ''for consumer sale'' indicates that the replica vehicle exemption program was not to apply to prototype, concept or show vehicles that were never sold to consumers. The Safety Act defines a motor vehicle as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways.[22] NHTSA stated that, since prototypes or concepts are not intended for sale to the public, they are not motor vehicles for these purposes. Accordingly, since the FAST Act provision requires that the replica vehicle resemble another motor vehicle manufactured for consumer sale, a vehicle replicating a prototype would not qualify for the exemption.

Comments Received and NHTSA Response

All commenters responding to this issue agreed with NHTSA's proposal. This final rule adopts the provision for the reasons discussed in the NPRM.

4. Requirement To Manufacture Under License Agreement for Intellectual Property Rights

The FAST Act definition of a replica motor vehicle provides that such vehicles are ''manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.'' The NPRM proposed that this provision required replica vehicles to be licensed products,[23] meaning that the replica manufacturer must obtain all legal rights necessary to produce the replica vehicle from the original manufacturer, its successes or assignees, or current owner of such intellectual property rights. NHTSA proposed that, when submitting its registration, manufacturers must provide a binding certification that attests that they can legally produce each replica vehicle model they propose to make. This proposed requirement meant that manufacturers would have to certify that they have determined the legal rights required and that they have obtained all licenses or permissions necessary to produce the replica vehicle.[24] Applications that contain a missing or incomplete certification would be disapproved. NHTSA also proposed that manufacturers must provide supporting documentation that sets forth a description of the types of IP necessary to produce the replica vehicle, describing the status of each of those rights. If the manufacturer had a license for particular rights, the agency proposed it should provide documentation to that effect. NHTSA sought comment on whether the replica vehicle manufacturer should be required to obtain a license to use the original vehicle's make and model names.

Comments Received

Many of the commenters addressed NHTSA's proposed requirements regarding intellectual property (IP) rights. VSCI, SEMA, Edelbrock, NADA, and potential replica vehicle manufacturers believed that NHTSA should require a certified statement that the replica vehicle owner either is the owner of all relevant IP rights, or has obtained the IP rights from the owner(s). These commenters disagreed with NHTSA's requiring the submission of documentation, stating that NHTSA was not the proper entity to address the issue of IP rights. Some commenters noted that NHTSA can revoke a license if such a statement was determined to be invalid. In contrast, two commenters, Tom Scarpello and the Alliance, supported a requirement that the potential replica vehicle manufacturer demonstrate that it has the IP rights. The Alliance argued that NHTSA should attend to the rights of IP holders, and

[20] 85 FR 796.

[21] 85 FR 797.

[22] 49 U.S.C. 30102(a)(7).

[23] 85 FR 797.

[24] In the NPRM, NHTSA stated it viewed its role as ensuring that the manufacturers who register under part 586 meet the statutory requirements set forth in the FAST Act; manufacturers would be responsible for performing the due diligence necessary to determine what intellectual property rights are needed, and to obtain relevant rights. 85 FR 798.

stated that the documentation accompanying an application should be in the public domain to help an IP holder who needed to assert its rights. The Alliance asked NHTSA to place the documentation in the public domain as soon as possible.

NHTSA Response

After considering the comments, NHTSA has decided not to require the submission of documentation showing ownership of IP or a license to use that IP. NHTSA's domain of expertise is automotive safety, not intellectual property; NHTSA does not have the expertise to access the validity or sufficiency of documentation submitted to show IP rights. Disputes over IP rights and ownership are best resolved through adjudicatory processes set up by the U.S. Patent and Trademark Office and the Federal courts. Given NHTSA's limited role in such processes, a requirement to submit the documentation to NHTSA is a paperwork burden that the agency cannot justify.

Accordingly, this final rule requires a low-volume manufacturer registering as a replica manufacturer to certify that the vehicle will be manufactured under a license for the product configuration, trade dress, trademark, or patent. This requirement is necessary pursuant to 49 U.S.C. 30114(b)(7)(B)(ii). It helps ensure that the vehicle is a ''replica motor vehicle'' as defined by § 30114(b)(7)(B), and thus qualifies for the FAST Act special exemption for replica vehicles. However, NHTSA is also requiring the registrant to certify it has obtained all IP necessary to produce the replica vehicle, not only the IP rights pertaining to the exterior of the vehicle, but also any IP implicated by designs elsewhere in the vehicle, such as the interior. Congress provided a special exemption for replica vehicles but clearly did so intending that all IP is to be respected in producing the vehicles.

The commenters did not support NHTSA's requiring a replica motor vehicle to include the make/model or badging on the vehicle. Commenters stated that this could create confusion between the replica vehicle and the original vehicle. Commenters also argued that NHTSA should not require the make/model of the replicated vehicle to be disclosed on the certification label and/or application, but merely the model year, asserting that such a disclosure could create a copyright violation. NHTSA has decided that it will not require any make/model or badging for the vehicle being replicated on the exterior of the vehicle. However, NHTSA will require replica vehicle manufacturers to include the make/model and model year of the vehicle they intend to replicate as part of their registration applications. Similarly, NHTSA will make available on NHTSA's website the information of make, model, and model year of the original vehicle the vehicle replicates. This information facilitates NHTSA's oversight of the program by helping the agency determine whether the registrant is manufacturing vehicles consistent with the information in its registration, and verify whether they are correctly labeling the vehicles with the information required by section 30114(b)(3)(A).

Making this information public also increases the transparency of the program, better informing the public as to which vehicles are replicated, and IP rights asserted by registrants. Publishing this information on NHTSA's website reasonably facilitates the public's role in overseeing the IP aspect of the program. IP rights are most effectively protected through a transparent registration process in which IP owners can protect their own rights. For those processes to work, owners and holders of IP rights must know when a replica motor vehicle manufacturer claims to hold the IP rights to the original vehicle. NHTSA will make public on its website certain other aspects of the vehicle that implicate IP rights, such as whether the replica vehicle is of a limited edition or customized model. Members of the public will be able to review this information and inform NHTSA of apparent improprieties or concerns that may disqualify a registration in the program.

IV. Safety Requirements

a. Equipment FMVSS

NHTSA explained in the NPRM that the FAST Act exempts replica motor vehicles from complying with the ''vehicle'' Federal motor vehicle safety standards in effect on the date of manufacture of the replica. The vehicle standards are those that apply to new vehicles of the replica's type (*e.g.,* passenger car, multipurpose passenger vehicle, see 49 CFR 571.3). The FAST Act is clear that replica vehicles are not exempt from the FMVSS that apply to ''equipment'' on or in the vehicle.[25]

Comments Received

A few commenters argued that there were some situations in which NHTSA should exempt replica vehicles from equipment standards. SEMA and Callaway argued that replica vehicle manufacturers should be permitted to use seat belts that do not fully comply with FMVSS No. 209 (which is an equipment standard) if the replica motor vehicle's design is inconsistent with the standard (*e.g.,* if the use of retractors is not possible due to the vehicle's design). SEMA, Edelbrock, and Callaway argued that, because compliance with the *new* vehicle equipment requirements in FMVSS No. 108 may not be technically or financially possible for replica motor vehicle manufacturers, NHTSA should permit compliance with *replacement* equipment requirements. Similarly, SEMA and Edelbrock argued that replica motor vehicle manufacturers should be permitted to use glazing that meets the ''aftermarket requirement'' in FMVSS No. 205, which allows the use of glazing that complies with 49 CFR 571.205a.

NHTSA Response

The FAST Act does not provide NHTSA with discretion to exempt replica vehicles from equipment standards. Accordingly, replica vehicle manufacturers must ensure that their vehicles comply with equipment standards such as FMVSS No. 209. However, we note that this final rule permits manufacturers a 10 percent leeway to vary from the dimensions of the original vehicle designs. As commenters suggested in the discussion as to dimensional flexibility, this flexibility should enable the installation of modern safety features, such as FMVSS No. 209-compliant retractors. That fact is one of the agency's primary reasons for permitting such flexibility. Accordingly, this leeway should satisfactorily accommodate the installation of compliant equipment.

NHTSA concurs that the lighting and glazing standards (FMVSS Nos. 108 and 205, respectively) have provisions that apply to vehicles (constituting a ''vehicle standard'') and provisions that apply to replacement equipment (which constitute an equipment standard).[26] We concur with the commenters' suggestion that this final rule should permit replica vehicles to meet the requirements for replacement equipment in the lighting and glazing standards. A reasonable reading of the FAST Act provision leads to this outcome, since FMVSS Nos. 108 and 205a include equipment-specific provisions, and because the only source of relevant equipment may be in the aftermarket replacement equipment market. NHTSA therefore agrees that,

[25] 49 U.S.C. 30114(b)(1)(B).

[26] NHTSA explained in the NPRM that some FMVSSs are both vehicle and equipment standards. 85 FR 793.

while lighting equipment and glazing must be FMVSS-compliant, replica motor vehicle manufacturers must meet the replacement equipment requirements of those standards, and not the vehicle-specific requirements.

b. Safety-Related Defects

NHTSA explained in the NPRM that obtaining an exemption from the FMVSS applicable to vehicles would have no effect on a replica vehicle manufacturer's obligation under the Safety Act to recall and remedy its vehicles found by the manufacturer or NHTSA to contain a defect that creates an unreasonable risk to safety. Further, manufacturers of replica vehicles must comply with the requirements of 49 U.S.C. 30116 through 30120A relating to defect reporting and notification. In addition, the FAST Act specifies that a low-volume manufacturer's registration in the program may be revoked if the manufacturer fails to comply with requirements, if its vehicles are found to contain a safety-related defect, or if the manufacturer engages in unlawful conduct that poses a significant safety risk. NHTSA did not receive any significant comments on this issue. This final rule adopts these provisions as they were proposed in the NPRM.

V. Registration Requirements

Under 49 U.S.C. 30114(b)(2), low-volume manufacturers must be registered ''[t]o qualify for an exemption.'' The NPRM proposed requirements to implement the registration requirements, discussed below.

a. When and How To Register

NHTSA proposed that each manufacturer wishing to manufacture replica motor vehicles under this program must register as a replica motor vehicle manufacturer for the calendar year in which the replica motor vehicle is manufactured. NHTSA would determine whether a manufacturer is eligible to manufacture replica motor vehicles based on the information the manufacturer provides in its registration documents. The agency proposed that manufacturers must register using the NHTSA Product Information Catalog and Vehicle Listing (vPIC) platform (*https://vpic.nhtsa.dot.gov/*). Comments were requested on whether to allow submissions by mail as well.

Comments Received and NHTSA Response

VSCI agreed that prospective replica manufacturers should only register through vPIC. NHTSA received no comments relating to whether written submissions should also be permitted. This final rule requires the vPIC platform to be used to register for and submit information to the replica exemption program. This computerized platform facilitates NHTSA's oversight and administration of the program, better allowing the agency to keep track of registrations and assess submissions. The vPIC platform also increases the transparency of registrations, enabling members of the public to examine registrations and learn about replica vehicle manufacturers and the vehicles they produce. Requiring that all applicants register via vPIC also better enables NHTSA to meet the time limits provided by the FAST Act for decisions on the submissions.

b. Required Information

NHTSA proposed that persons seeking to register must submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, does not exceed 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12 months prior to filing the registration.

The NPRM proposed that each registrant must provide information about the replica vehicle(s) it intends to manufacture, including a statement identifying the original vehicle(s) the manufacturer intends to replicate by make, model, and model year. The NPRM proposed that registrants must submit images of the front, rear, and side views of the original vehicle's exterior. The manufacturer would also need to provide documents showing that it obtained the intellectual property rights necessary to produce the replica vehicle, documents to support that it has done so, and a statement certifying to that effect. The NPRM stated that proof of such rights could be shown by furnishing a license for the product configuration, trade dress, trademark, or patent, for the intended replica motor vehicle from the original manufacturer, its successors or assignees, or the current owner of such product configuration, trade dress, trademark, or patent. This documentation could also include a statement as to why obtaining licenses for certain intellectual property is not required.

NHTSA proposed that the replica vehicle manufacturer would need to certify that it would not manufacture more than 325 replica motor vehicles in a calendar year. NHTSA interpreted the 325-vehicle limit in the FAST Act to mean that a manufacturer would be limited to 325 replica vehicles, regardless of whether it is manufacturing replicas of different makes and models of vehicles.

Comments Received and NHTSA Response

No significant comments were received on this issue. This final rule adopts the provisions as discussed in the NPRM.

c. Time Periods

49 U.S.C. 30114(b)(5) specifies that NHTSA has 90 days to review and approve or deny a registration, plus an additional 30 days if the registration is determined to be incomplete. NHTSA anticipated setting up the program so that registration under part 586 on the vPIC portal provides an acknowledgment of receipt of the registration to the manufacturer when the registration is submitted. The NPRM proposed that, since some of the information would be provided by the manufacturer in attachments, NHTSA would review the submission, including attachments, within 90 days of acknowledging receipt to ensure that the registration is complete.

NHTSA proposed procedures to provide for registrants submitting an incomplete application. Rather than denying the incomplete application immediately and outright, the proposed procedures would permit NHTSA to inform the manufacturer that the registration is incomplete via email. NHTSA proposed to give registrants 60 days from the date of NHTSA's email to submit the necessary information to complete the registration. If the necessary information were not submitted within 60 days, the registration would be denied.[27]

Under the proposal, once a manufacturer submitted missing information within 60 days of being informed of the incomplete status, NHTSA would have 30 additional days to review the amended registration. That is, these 30 days would be added to any remaining days from the initial 90-day review period. If the submission was still incomplete, NHTSA would deny the registration. If a registrant submitted information on its own initiative (without being notified by NHTSA that

[27] The manufacturer may resubmit the registration (presumably, the resubmitted registration will include the information that was missing from the prior application) but doing so would restart the 90-day clock. The NPRM proposed to deny repetitious, incomplete, or inadequate registrations. For example, if a manufacturer resubmitted a previously denied registration in identical form, NHTSA could deny the application without requesting additional information.

its registration is incomplete), NHTSA would have the same 30 additional days added to any remaining days from the initial 90-day period to review the amended registration. These additional days to review would provide NHTSA the ability to manage its resources to accommodate and account for incomplete registrations.

Comments Received and NHTSA Response

The only comment on this issue was from SEMA, which concurred with the proposal to allow 60 days to reply to a request for additional information. Aside from clarifying changes made to the regulatory text, this final rule adopts the provisions relating to the timing of incomplete registrations as discussed in the NPRM.

d. Deemed Approved

49 U.S.C. 30114(b)(5) states that any registration not approved or denied within 90 days after initial submission, or 120 days if the registration submitted is incomplete, shall be deemed approved. The NPRM proposed that a manufacturer would not be considered registered with NHTSA unless the manufacturer received confirmation from NHTSA that it is registered. The NPRM proposed that a manufacturer whose registration was not approved or denied within the allotted time, and who believed its registration was deemed approved, should still be required to receive confirmation of the approval from NHTSA. NHTSA would add the manufacturer to the up-to-date list of registrants once approval was confirmed.

NHTSA explained that this proposal for confirmation of approvals was to safeguard the integrity of the exemption program against confusion and fraud. The agency sought to avoid situations in which a manufacturer might assume its registration was deemed approved when, in fact, it was never received. The proposal explained the confirmation process would better-establish a means of communication between the agency and the manufacturer, and better ensure the list of replica manufacturers on NHTSA's website is complete and accurate. A complete and accurate list is important for the public to determine whether a manufacturer qualifies for an exemption, and which vehicles are covered by the exemption. The list also provides NHTSA with a strong enforcement mechanism to monitor which manufacturers are lawfully presenting themselves as registrants, and which vehicles are appropriately offered for sale.

If a registration were deemed approved but had not met part 586 requirements originally, the NPRM proposed a means by which NHTSA could request additional information from the ''deemed approved'' manufacturer to rectify the registration. NHTSA proposed that, when notified of the submission's shortcomings, the manufacturer would have 60 days to submit information to correct and/or complete the registration.

Comments Received

Calloway, Caterham, DeLorean Motor Company (DeLorean), Edelbrock, VSCI and SEMA all disagreed with NHTSA's proposal to require manufacturers to confirm that their application had been ''deemed approved.'' Commenters stated that this requirement was contrary to the FAST Act, with Calloway adding that this requirement would essentially allow NHTSA unlimited time to process applications. Edelbrock, VSCI and SEMA also noted that NHTSA retains the authority to revoke a ''deemed approved'' application that it later determined was improper.

NHTSA Response

NHTSA agrees that the proposed ''deemed approved'' procedure could have been less burdensome on registrants, but believes that many of the concerns of the commenters arose from a misunderstanding of the proposal and can be addressed with the following explanation of the registration process and clarifying changes to the regulatory text. NHTSA developed the vPIC platform to accommodate the replica vehicles exemption program. The platform is designed so that, when NHTSA receives an application through its vPIC portal, the vPIC system will acknowledge the application, provide the registrant with a key number to track its application, and automatically start a 90-day timer. At the end of 90 days, if NHTSA has taken no action on the application, vPIC will automatically add the applicant to the list of approved replica motor vehicle manufacturers (albeit, with a note that their application was ''deemed approved'' rather than affirmatively approved by the agency). An application that has *not* been affirmatively approved and does *not* show up on the list of approved replica manufacturers, would occur only because (1) NHTSA determined the application was incomplete, or (2) NHTSA denied the application.

In both of the above two scenarios, the vPIC system is programmed to notify the applicant of NHTSA's determination. If, for some reason, such notice was not received, it was because the application was determined to be incomplete or was denied—and that a technical issue (*e.g.,* the email was blocked by the applicant's ''spam filter'') prevented receipt of the notification. Because a determination that an application was incomplete or denied would automatically generate an email communication from NHTSA to the applicant, the agency emphasizes that it is in the interest of potential applicants that they enquire with NHTSA as to why their application has not been ''deemed approved,'' and their name listed, after 90 days.

NHTSA designed vPIC and the registration system to provide for open email communications between applicants and the agency. An applicant could have overlooked the notice or had an email address configured such that the email was not delivered (perhaps it was mistakenly identified as ''spam''). NHTSA sought to prevent a situation where an applicant assumes it is approved and commences operations after 90 days, when the application was incomplete, denied, or never received. Such an applicant would be at risk of potentially violating 49 U.S.C. 30112(a) for manufacturing for sale or selling nonconforming vehicles. Accordingly, NHTSA drafted this final rule with text encouraging applicants to check the list of approved registrants after 90 days, and to inquire with the agency if their name is missing. Applicants can easily check the status of their application themselves on the vPIC website using the key number that NHTSA sends in the confirmation email generated at the time the application is submitted. They can also contact the NHTSA Manufacturer Helpdesk at *manufacturerinfo@dot.gov* or 1–888–399–3277.

NHTSA also reiterates that, while the agency, by statute, will deem approved registrants if the agency does not respond to the application within the statutory timeframe, the agency can review the ''deemed approved'' application later in the process to determine whether it meets the requirements of the FAST Act and part 586. It is NHTSA's understanding that the purpose of the provision is to ensure that replica motor vehicle manufacturers are not burdened by procedural delays beyond their control. To ensure the provision does not become a means by which nonconforming replica vehicles not meeting requirements can be produced and sold, the agency makes clear that NHTSA can determine later, based on the contents of the application, that the application should be denied, and at such time may take steps to remove the manufacturer from the list of registrants.

In its comments, SEMA supported this position and noted that NHTSA has authority to revoke a ''deemed approved'' registration later found not to meet the requirements of part 586.

Given commenter confusion over NHTSA's procedures for ''deemed approved'' registrants, NHTSA is finalizing clarified regulatory text describing the procedures for processing and approving or denying registrations.

VI. Other Administrative Requirements

a. Manufacturer Identification Requirements (49 CFR Part 566)

NHTSA proposed amending part 566 to list replica motor vehicles among the types of vehicles that must be identified to the agency. Low-volume manufacturers who wish to manufacture replica motor vehicles and who have already submitted information under part 566 would be required to update their information before manufacturing the replica vehicles. NHTSA intended the addition of ''replica motor vehicles'' to the types of vehicles listed in part 566 to identify the manufacturer as a replica vehicle manufacturer. The manufacturer of a replica vehicle would determine the standards from which the replica vehicle is exempt by examining the ''application'' sections of the standards. We proposed that the vehicle's vehicle identification number (VIN) and certification labels would reflect that the vehicle is a replica of a specific vehicle type defined in 571.3 (*e.g.,* replica passenger car, replica multipurpose passenger vehicle, etc.).

Currently, § 566.5 requires manufacturers to ''furnish the information'' to the Administrator and provides a street address to do so. NHTSA proposed to update § 566.5 to indicate that manufacturers, other than manufacturers of replica vehicles, could submit the part 566 information via the vPIC portal or via mail to the agency's address. However, the NPRM proposed that replica motor vehicle manufacturers, specifically, must submit the information via vPIC because of administrative requisites. Because of the short time limits under which NHTSA must decide on the registrations, electronic vPIC records (versus paper copies) would expedite NHTSA's review of the applications. (The agency notes that most, if not all part 566 manufacturer identification entries are currently submitted on vPIC.)

Comments Received and NHTSA Response

No significant comments were received on this aspect of the program. Thus, NHTSA is requiring the use of the vPIC website to reduce the administrative costs and complications that are associated with processing hard-copy replica vehicle manufacturer applications, and in recognition that a large portion of the information submitted to register as a replica motor vehicle manufacturer would need to be uploaded to vPIC so that it can be made available to the public. Moreover, the use of the vPIC system ensures that an applicantt that is later ''deemed approved'' will be reliably added to the list of approved registrants. Because most, if not all, part 566 manufacturer identification entries are currently submitted on vPIC, NHTSA believes requiring replica manufacturers to use vPIC will not be burdensome.

b. Manufacturer Identifier and VIN Requirements

Manufacturers intending to manufacture motor vehicles for sale or introduction into interstate commerce in the United States must obtain a manufacturer identifier, which is incorporated into the vehicle's VIN (see section below). NHTSA has a contract with SAE International to assign manufacturer identifiers to manufacturers in the United States. Manufacturers located outside of the U.S. must obtain a manufacturer identifier from the WMI-issuing entity in the country in which they are located.[28] U.S. manufacturers should contact SAE International directly (and not NHTSA) to request the assignment of a manufacturer identifier. They would do so by telephoning 724–772–8511 or by writing to: SAE International, 400 Commonwealth Avenue, Warrendale, PA 15096, Attention: WMI Coordinator. The NPRM proposed that replica motor vehicle manufacturers also must obtain unique manufacturer identifiers.

NHTSA's regulations at 49 CFR part 565 require, among other things, a motor vehicle manufacturer to assign each motor vehicle manufactured for sale in the United States a 17-character VIN that uniquely identifies the vehicle. Under part 565, a vehicle identification number is ''a series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes.'' [29]

VINs deter vehicle theft and serve a variety of public safety purposes. VINs serve ''to increase the accuracy and efficiency of vehicle recall campaigns'' [30] and are the key identifier in data systems that track such things as compliance with Federal importation regulations, vehicle registrations, insurance coverage, and motor vehicle crashes. Entities that today utilize VINs in data systems include NHTSA, vehicle manufacturers, State motor vehicle departments, law enforcement agencies, insurance companies, and organizations and individuals involved in motor vehicle safety research.[31]

NHTSA proposed several administrative changes to the VIN requirements to account for replica vehicles. The changes are discussed in detail in the NPRM (85 FR at 801).

Comments Received

AAMVA asked for clarification that NHTSA is not changing current coding, and expressed concern that many other State data systems would require changes if this were the case. One individual stated that the make, model and model year of the replicated vehicle should be coded in the VIN. NTEA recommended putting all requirements in part 586 as was done in part 595, ''Vehicle Modifications to Accommodate People with Disabilities,'' rather than amending parts 567 and 568.

NHTSA Response

This final rule does not change how VINs are coded for non-replica motor vehicles. The primary change it makes is to add requirements unique to replica motor vehicles—most notably the requirement that, in addition to the information required for the replica motor vehicle's type classification, the manufacturer must code the make, model, and year of the original motor vehicle being replicated into the ''vehicle attributes'' section of the VIN (positions four through eight). NHTSA does not anticipate that States must change their VIN coding system because of the replica vehicle VIN requirements.

NHTSA is not adopting NTEA's suggestion that the labeling requirements for replica vehicles should be moved from the certification regulation (49 CFR part 567) to part 586. The commenter would like part 586 to contain all the requirements for replica vehicles, in a manner similar to that of 49 CFR part 595 subpart C, which sets forth an exemption from the Safety Act's ''make inoperative'' provision.[32] We

[28] If a country does not have a WMI-issuing entity, the manufacturer may request a WMI from SAE. This service is separate from SAE's issuance of WMIs for U.S. manufacturers under contract with NHTSA.

[29] 49 CFR 565.12(r).

[30] 49 CFR 565.10.

[31] 73 FR 23367–01, September 30, 2008.

[32] Under section 30122, a vehicle manufacturer, distributor, dealer, rental company or repair business, may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle or item of equipment in compliance with an applicable FMVSS. NHTSA has

have decided not to use the approach of subpart C because the scope of the replica vehicle regulation is much broader, and more comprehensive, than the make inoperative exemption program of part 595 subpart C. The replica vehicle regulation pertains to the *manufacture* of new vehicles and involves exempting the vehicles from the Safety Act's directive to meet Federal crashavoidance and crashworthiness standards. The regulation setting forth an exemption from the make inoperative requirement is narrow and could be self-contained in a single subpart. In addition, regarding the labeling requirement at issue, we believe it makes sense to establish the requirement in part 567 because the label for replica vehicles serves to replace the certification label required by part 567 for nonexempt vehicles. It is fitting to place the requirement in part 567, since that is NHTSA's designated location for permanent label requirements relating to a manufacturer's certification of compliance with, or exemption from, the FMVSS.

However, we have made a slight revision to part 586 in response to NTEA's comment. The agency emphasizes that each replica vehicle manufacturer is responsible for knowing and meeting all NHTSA requirements applying to the manufacture and sale of its vehicles; NHTSA had included text on that basic tenet in proposed § 586.5(c). After considering NTEA's comment, we added a clause to paragraph (c) to refer to part 567. New § 586.5(c) states that each replica motor vehicle manufacturer shall meet all statutory and regulatory requirements, including requirements at 49 CFR part 567.[33] NHTSA believes this addition will make it more convenient for replica vehicle manufacturers to locate the labeling requirements in part 567 and will illustrate there are Safety Act requirements of which they must be aware contained other than in part 586.

c. Declaration Form for Replica Motor Vehicles

NHTSA proposed that imported replica vehicles would be subject to requirements in 49 CFR part 591, *Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.* Section 591.5, *Declarations required for importation,* requires importers to file declarations and documentations with the U.S. Customs and Border Protection at the time vehicles or items of motor vehicle equipment are imported. Consistent with NHTSA's treatment of vehicles that are subject to exemptions under 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* NHTSA expected that replica vehicles could be imported pursuant to 49 CFR 591.5(b). This is to say, importers would mark box ''2A'' on NHTSA's HS–7 declaration form, *Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper Standards,* when importing a replica motor vehicle. NHTSA requested comment on whether the agency should amend 49 CFR 591.5 to provide clarity and include specific language that states that replica vehicles may be imported pursuant to a declaration under 49 CFR 591.5(b).

Comments Received

SEMA and others supported NHTSA's proposal to allow replica vehicle manufacturers to check box 2A on the importer form (Form HS–7). Conversely, AAMVA requested a separate listing on the importer form for clarity.

NHTSA Response

As explained in the NPRM, NHTSA believes that replica motor vehicles should be treated similarly to vehicles exempted under NHTSA's general exemption authority (49 U.S.C. 30113), since they are not being imported for a specified purpose other than resale. NHTSA therefore does not believe it is necessary to amend the HS–7 declaration form at this time. Importers of replica motor vehicles should mark box 2A on the form.

We note that this final rule includes a minor change to the regulatory text to 49 CFR part 591.5(b) so that the regulation specifically includes replica motor vehicles as a category of imported vehicles. Although NHTSA proposed making this change in the preamble to the NPRM and specifically took comment on it, due to a clerical error, the changes to part 591.5(b) were inadvertently omitted from the proposed regulatory text. NHTSA has also added clarifying language to 49 CFR part 591.5(b) to explicitly specify that an importer of a replica motor vehicle must be a ''low-volume manufacturer'' as that term is defined under the replica program.

VII. Labels and Other Consumer Disclosures

49 U.S.C. 30114(b)(3)(A) directs NHTSA to require low-volume manufacturers to affix a permanent label to motor vehicles produced pursuant to a replica vehicle exemption. The label ''identifies the specified standards and regulations for which the vehicle is exempt from section 30112(a), states that the vehicle is a replica, and designates the model year such vehicle replicates.'' *Id.* Section 30114(b)(3)(B) states that NHTSA may require a low-volume manufacturer of a replica vehicle to deliver written notice of the exemption to the dealer and the first consumer purchaser of the vehicle.

a. Permanent Label

NHTSA proposed that the requirement for permanent labeling be incorporated into the requirements for certification labels under 49 CFR part 567 because part 567 includes permanent labeling requirements pertaining to FMVSS certification. NHTSA proposed added statements for replica vehicles. For replicas, NHTSA proposed that the label state that the vehicle is a replica, state the make, model, and model year of the vehicle it replicates, state that the vehicle is exempt from FMVSS that apply to a vehicle of its type, and include a list of all vehicle FMVSS and regulations the vehicle does not meet.

Comments Received

Several commenters expressed concerns about the requirement to list all the FMVSS from which the replica motor vehicle was exempt on the permanent label, stating that such a requirement would be unwieldy and unfeasible. As an alternative, ElectroMeccanic and an individual suggested a simpler label that directed the reader elsewhere for more information, such as to the owner's manual, the manufacturer's website, or a location like the underside of the vehicle hood. Morgan Motor Company (Morgan), VSCI and SEMA suggested an option of an alternative statement indicating that the vehicle is exempt from all FMVSS except those specifically identified by the manufacturer.

NHTSA Response

49 U.S.C. 30114(b)(3)(A) specifically states that a replica motor vehicle must be permanently affixed with a label ''that identifies the specified standards and regulations for which such vehicle is exempt from section 30112(a).'' Since NHTSA is not provided with discretion to avoid this disclosure, the agency is

the authority to issue regulations that exempt regulated entities from the make inoperative provision (49 U.S.C. 30122(c)). The agency has used that authority to adopt 49 CFR part 595, ''Make Inoperative Exemptions.'' Part 595 subpart C sets forth an exemption permitting persons in certain circumstances to modify vehicles after first sale to accommodate persons with disabilities.

[33] As NHTSA is not permitting replica vehicles to be manufactured in more than one stage, NHTSA has not included a reference to part 568.

adopting the permanent labeling requirement as proposed, with minor revisions. Identifying the standards and regulations from which the vehicle is exempt is consistent with the statute, whereas allowing replica manufacturers to list only the standards with which a replica motor vehicle complies is not. The former makes clear to the prospective purchaser the universe of FMVSSs with which the replica vehicle does not comply, as required by the FAST Act. NHTSA does not believe that allowing the label to direct customers to the manufacturer's website is consistent with the statutory language, since: (a) Such information would not be permanently affixed on a label; and, (b) a website might not be maintained, or may have service interruptions. Referring readers to an owner's manual also does not meet the FAST Act requirement that the information be disclosed on a permanent label. A label on the underside of the hood is unacceptable because such a disclosure is not prominently placed and is unlikely to be noticed.

That said, NHTSA agrees that this final rule should permit the label to be separate from the certification label. While the information described in 49 U.S.C. 30114(b)(3)(A) must be permanently affixed on a single label (''a label''), it need not be combined with the certification label. Accordingly, NHTSA has revised the labelling requirement in this final rule to allow replica motor vehicles to permanently affix the information in 49 U.S.C. 30114(b)(3)(A) to either the certification label, or a separate label located adjacent to or near the certification label.

b. Written Notice to Dealers and First Purchasers; Temporary Label

The FAST Act specifies that NHTSA may require registrants to provide ''written notice of the exemption'' to dealers and first purchasers of replica vehicles.[34] NHTSA proposed to require a written disclosure to dealers and first purchasers of the vehicles consisting of a list of the FMVSS and regulations from which the vehicle is exempt. The written notice was to be in the owner's manual or in a separate document. The written disclosure was to include a ''purpose statement'' for each standard and regulation from which the vehicle is exempt. Such statements were intended to assist consumers in understanding the safety implications of the exemptions. The agency proposed the purpose statements be in a Table 1 to part 586. In addition, NHTSA proposed replica vehicles must have a temporary label attached to a location on the dashboard or the steering wheel hub warning prospective purchasers that the replica vehicle is exempt from the vehicle FMVSSs, theft prevention and bumper standards.

Comments Received

NADA supports the idea of providing information to purchasers, but believes that manufacturers should have the option of providing the information in Table 1 or in the temporary label, provided the label also points to a reference website where consumers can find more information on the exemptions. SEMA and Edelbrock disagree with requiring manufacturers to provide consumers with the information in Table 1. SEMA compared potential purchasers to kit car owners—*i.e.,* as SEMA described them, car enthusiasts who know what they are purchasing. SEMA also claimed that new car purchasers rely on the agency's New Car Assessment Program website to understand the value of the FMVSS.

NHTSA sought comment on whether information warning prospective purchasers about the replica vehicles' nonconformance with applicable standards should be provided in advertisements and other marketing materials for the vehicles. Morgan stated this would be unnecessary since such warnings would be seen at the point of sale when the vehicle is viewed.

NHTSA Response

NHTSA concurs with the commenters' arguments about the redundancy of the proposed requirements and has decided against adopting some aspects of the proposed disclosures. NHTSA believes that a temporary label in the passenger compartment would be sufficient to meet the purpose of the proposed requirements for written disclosure to the dealer and the first purchaser[35] and that providing both the temporary label and a written disclosure is unnecessary. NHTSA concludes that a temporary label is a more effective way of communicating that the vehicle is exempt from the FMVSS because it would be in a prominent visible location and the consumer would need to affirmatively handle and remove the label. NHTSA agrees not to require that purpose statements be disclosed to consumers. Listing the specific standards and regulations from which the replica vehicle is exempt should be sufficient to convey to the consumer the extent to which the standards do not apply to the FMVSSs, and NHTSA does not have reason to believe that a disclosure of the purpose behind each standard would affect the purchasing decisions of prospective replica vehicle purchasers.

VIII. Reporting

Under 49 U.S.C. 30114(b)(3)(C), NHTSA must require replica manufacturers to submit an annual report providing the number and description of motor vehicles exempted as replica motor vehicles, including a list of the exemptions included on the mandatory label described in the above section. NHTSA proposed that annual reports must be submitted within 60 days of the end of the calendar year. Because these vehicles would be produced in limited quantities, NHTSA believed that the information for the report could be entered after each vehicle is manufactured, and that a 60-day deadline for submitting the report at the end of the calendar year is therefore reasonable.

NHTSA proposed that annual reports include: The manufacturer's legal name; the manufacturer's address, phone number and email address; the calendar year for which the annual report is submitted (replica model year), and the total number of replica vehicles manufactured during that year; a list of the different versions of replica motor vehicles produced by make, model, and original model year of replicated vehicle; a list of the FMVSS and regulations from which each version of replica vehicle (by make, model, and original model year of replicated vehicle) is exempt; images of the front, rear, and side views of the original vehicle(s) replicated, of both the vehicle's exterior, and images of the same views of a representative replica manufactured to resemble each original vehicle; and a full complete package of descriptive information, views, and arguments sufficient to establish that the replica motor vehicles, as manufactured, resemble the body of the original vehicle. The reports would also be required to include: A statement of whether the registrant will be manufacturing the same replica motor vehicle(s) in the next calendar year, and, if so, an estimate of the number of vehicles that would be manufactured. NHTSA proposed the annual report include a list of the complete VINs of all replica vehicles included in the annual report. These requirements would assist NHTSA in enforcing the annual limit of 325 replica vehicles per manufacturer. NHTSA believed that, as manufacturers already maintain lists of all VINs

[34] 49 U.S.C. 30114(b)(3)(B).

[35] 49 U.S.C. 30114(b)(3)(B)(i) and (ii).

manufactured in a given year, the burden should be minimal.[36]

The NPRM proposed that manufacturers intending to continue to manufacture replica motor vehicle(s) must also submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration. The reports would also include a statement as to whether the replica vehicle contains any of the following vehicle safety features—air bags, seat belts, advanced safety systems/passive safety systems (listed with locations), electronic stability control, rear visibility camera system, and ejection mitigation air bags.

NHTSA proposed that the annual report must be submitted using vPIC. NHTSA believed that the use of the online portal would be less burdensome than requiring manufacturers to submit their annual reports by mail. Online submission of the annual reports would also assist NHTSA in complying with the FAST Act requirement that NHTSA maintain a list of manufacturers on its website of replica motor vehicles and the make and model of exempted vehicles being produced.

Comments Received and NHTSA Response

No significant comments were received on this issue. NHTSA adopts the proposal for the reasons discussed above and in the NPRM.

IX. Termination of Exemptions

a. Revocation

49 U.S.C. 30114(b)(5) specifies that NHTSA has the authority to revoke a registration based on a failure to comply with requirements or a finding of a safety-related defect or unlawful conduct. NHTSA proposed that NHTSA may require registrants to provide information at any time demonstrating compliance with the requirements of part 586, and that the agency may revoke an existing registration, or deny a registration, based on a failure to comply with part 586, or on a finding of either a safety-related defect or unlawful conduct under the Safety Act that poses a significant safety risk. The proposed section provided that NHTSA would provide a registrant a reasonable opportunity to correct deficiencies, if such are correctable, based on the sole discretion of NHTSA.

Comments Received and NHTSA Response

The only views received on this issue supported the agency's position and noted that NHTSA has authority to revoke a ''deemed approved'' registration later found not to meet requirements. NHTSA adopts the proposal for the reasons discussed above and in the NPRM.

b. Expiration

49 U.S.C. 30114(b)(5) provides that an exemption granted to a low-volume manufacturer may not be transferred to any other person, and that the 325-vehicle production authorization is limited to the calendar year in which the exception is granted, and unused production capacity (*i.e.,* the difference between the 325-vehicle authorization and actual vehicle production) does not accrue and carry forward into subsequent calendar years, but expires at the end of the calendar year in which it was granted. NHTSA interpreted 49 U.S.C. 30114(b)(5) as referring to unused production capacity under an exemption in a calendar year, and not as requiring that manufacturers must re-register (renew their registrations) annually. NHTSA proposed that registrants may carry forward their registration by informing NHTSA in an annual report (discussed above) of their intent to continue manufacturing the vehicles covered by the approved registration, and need not formally re-register annually at the end of the calendar year concerning those covered vehicles.

Comments Received and NHTSA Response

No significant comments were received on this issue. NHTSA adopts the proposal for the reasons discussed in the NPRM.

X. List of Registrants

49 U.S.C. 30114(b)(5) specifies that NHTSA must maintain an up-to-date list of registrants and a list of the make and model of exempted motor vehicles on at least an annual basis and publish such list in the **Federal Register** or on a website operated by NHTSA. NHTSA proposed it would post such a list on NHTSA's website where it can be easily accessed and updated.

Comments Received and NHTSA Response

No significant comments were received on this issue. NHTSA adopts the proposal for the reasons discussed in the NPRM.

XI. Overview of Benefits and Costs

NHTSA prepared a preliminary regulatory evaluation for the NPRM that requested comment on the framework for the benefit cost analysis and preliminary estimates included in the analysis. No significant comments were received on the evaluation.

For this final rule, NHTSA has developed a Final Regulatory Evaluation (FRE) that discusses the potential costs, benefits and other impacts of this regulatory action. The FRE is available in the docket for this final rule and may be obtained by downloading it or by contacting Docket Management at the address or telephone number provided at the beginning of this document.

The table below provides a summary of the various benefits and costs that may accrue from this rule, as well as the various factors that define the range of possible outcomes.

TABLE 1—RANGES OF OUTCOMES FOR BENEFIT AND COST CATEGORIES

Element	Low case	High case
Benefits		
Incremental consumer surplus ..	*Not estimated:* Incremental consumer surplus would be low if substitutes such as luxury sports cars and kit cars are viable alternatives for consumers.	*Not estimated:* If replicas manufactured under the rule differ greatly in price and/or transaction cost from luxury sports cars and kit cars—thus behaving more like a unique product—incremental consumer surplus could be high.

[36] Although manufacturers keep lists for business purposes, it is also required by 49 CFR part 573, Defect and Non-Compliance Responsibility and Reports.

TABLE 1—RANGES OF OUTCOMES FOR BENEFIT AND COST CATEGORIES—Continued

Element	Low case	High case
Incremental fatalities, injuries and property damage.	*Estimated:* Fatalities would be lower if: Voluntary compliance with safety standards is high; production of replicas is on the low end; and VMT by replicas is also low. *Not Estimated:* Fatalities will be lower if replicas primarily function as a substitute for kit cars.	*Estimated:* Fatalities would be higher if: Voluntary compliance is low; production is high; and if VMT is high. *Not Estimated:* Fatalities would be higher if replicas function as a new market that attracts new consumers—implying substitution from more compliant vehicles—or, if replica vehicle drivers choose to increase their VMT specifically to enjoy the replica vehicle, rather than as a substitute for mileage driven in substitute vehicles.
Incremental fuel use	*Not Estimated:* Reflects low VMT	*Not Estimated:* Reflects high VMT.
Innovation	*Not Estimated:* The rule is primarily used to replicate old designs.	*Not Estimated:* Manufacturers producing under the rule seek to incorporate some newer technologies into replica vehicles. Could lead to innovation to make technology fit into older designs. (*e.g.*, miniaturization).
Incremental employment impacts.	*Not Estimated:* Job losses from contractors and small businesses that assemble kit cars are around or equal to the job gains for small replica manufacturers.	*Not Estimated:* If kit car production remains relatively stable and replica car production increases significantly (consistent with case where replicas are a new and separate product category), employment effects would be greater.
Costs		
Reduced compliance costs	*Estimated:* Captures the cost of installing required safety technologies on an average modern car.	*Not Estimated:* Would consider the avoided costs of forcing required safety technologies into older vehicle designs.
Reporting costs	*Estimated:* Reflects low bound of production	*Estimated:* Reflects high bound of production.

NHTSA calculated the impact of the final rule on benefits by analyzing the change in safety impacts related to increased fatalities, injuries and property costs due to eliminating compliance with vehicle FMVSS and bumper standards. The primary impact on benefits of this final rule would be an expected increase in fatalities and injuries for drivers and occupants in both replica vehicles and some portion of their crash partners due to reducing FMVSS requirements. Per-vehicle benefit and cost impacts are presented by vehicle type and discount rate in Table 2:

TABLE 2—SUMMARY OF BENEFIT AND COST IMPACTS

[Per vehicle, 2017 dollars]

Impact	Passenger cars	LTVs
Benefits—3% Discount Rate	−$8,449 to −$1,068	−$9,514 to −$744.
Benefits—7% Discount Rate	−$6,314 to −$794	−$7,039 to −$548.
Costs—3% Discount Rate	−$2,215 to −$827	−$1,935 to −$664.
Costs—7% Discount Rate	−$2,174 to −$812	−$1,899 to −$652.
Net Benefits—3% Discount Rate	−$6,233 to −$241	−$7,579 to $80.
Net Benefits—7% Discount Rate	−$4,139 to $18	−$5,140 to $104.

There is considerable uncertainty in the degree of regulatory relief replica vehicle manufacturers would incorporate into the vehicle manufacturing process under the final rule. That is, although the final rule would eliminate compliance requirements with all vehicle FMVSS and bumper standards, at least some replica vehicle manufacturers may comply voluntarily with at least some vehicle FMVSS and bumper standards.

At a minimum, NHTSA believes it is reasonable to assume that replica vehicle manufacturers will provide at least three-point seat belts voluntarily. The agency notes that, in the NPRM, this assumption was based, at least in part, on NHTSA's view that States could still require vehicle safety features as part of the registration and titling requirements. As discussed further below, NHTSA has reconsidered this view in part, as the Agency is now not taking a position on what types of State laws would or would not be preempted. However, regardless of this question, NHTSA continues to believe that it is reasonable that belts will be installed in at least many replica vehicles because, at a minimum, consumers will demand seat belts or insurance companies would likely either require them in replica vehicles or charge prohibitively high premiums for replica vehicles without seat belts. Thus, NHTSA believes it would be unrealistic to expect replica vehicle manufacturers to sell replica vehicles that would be manufactured without belts. In this analysis, NHTSA investigates the implications of seat belt requirements by presenting benefit and cost impacts under a baseline in which all replica vehicle manufacturers provide three-point seat belts voluntarily (referred to as the *Voluntary Seat Belts* scenario).

NHTSA believes it is also possible that at least some replica vehicle manufacturers will design vehicles that voluntarily comply with all standards except those that would impair the resemblance of replica vehicles to the corresponding original vehicles. NHTSA represents the implications of appearance constraints by presenting benefit and cost impacts under a baseline in which all replica vehicle manufacturers comply with all relevant standards except for those assumed to have the strongest effect on vehicle appearance: All air bags (affecting the appearance of steering wheels, dashboards, and the lining of the interior), roof crush resistance (affecting the appearance of pillars), and bumper standards. This scenario is referred to as the *Appearance Constraint* scenario). However, though NHTSA believes the same factors that would encourage the *Voluntary Seat Belts* scenario would be present here, the Agency believes that these factors, particularly consumer demand, are likely weaker here, and

thus that this scenario may be less likely than the above scenario.

The FRE also presents per-vehicle estimates under a scenario in which replica vehicle manufacturers relax compliance with all standards affected by the final rule (referred to as the *Full Exemption* scenario). However, NHTSA does not expect this scenario to be a realistic outcome under the final rule, due to consumer demand, insurance-related factors, and possible litigation concerns, and the uncertainty regarding the effect of various State laws, and thus only presents this information as a sensitivity case.

We, thus, present estimates under the *Voluntary Seat Belts* and *Appearance Constraint* scenarios as upper and lower bounds, respectively, of the scope of impacts that would likely be observed under the final rule. NHTSA estimates that involvement in the part 586 exemption program established by this final rule will save low-volume manufacturers of replica passenger cars and light trucks and vans (LTVs) between $3.4 million and $17.2 million at a three-percent discount rate (between $3.3 million and $16.9 million at a 7% discount rate) annually, resulting from the elimination of the requirement to certify compliance of their vehicles with the vehicle FMVSS, fuel economy standards, bumper standards, and labeling requirements. NHTSA estimates that the annual impact on benefits associated with the final rule will be between −$68.4 million and −$4.1 million at a 3% discount (between −$51.1 million and −$3.1 million at a 7% discount rate) annually, resulting from incremental property damage, injury, and fatality costs.

TABLE 21—TOTAL ANNUAL DISCOUNTED NET BENEFITS

[Millions of 2017 dollars, 3% discount rate]

Scenario	Annual production	VMT	Total benefit impact	Total cost impact	Net benefits
Appearance Constraint	3,600 Cars, 400 LTVs	Low Case	−$4.1	−$3.4	−$0.8
Appearance Constraint	3,600 Cars, 400 LTVs	High Case	−9.6	−3.4	−6.2
Appearance Constraint	7,200 Cars, 800 LTVs	Low Case	−8.3	−6.5	−1.8
Appearance Constraint	7,200 Cars, 800 LTVs	High Case	−19.3	−6.5	−12.8
Voluntary Seat Belts	3,600 Cars, 400 LTVs	Low Case	−14.6	−8.7	−5.8
Voluntary Seat Belts	3,600 Cars, 400 LTVs	High Case	−34.2	−8.7	−25.5
Voluntary Seat Belts	7,200 Cars, 800 LTVs	Low Case	−29.2	−17.2	−12.0
Voluntary Seat Belts	7,200 Cars, 800 LTVs	High Case	−68.4	−17.2	−51.2

TABLE 22—TOTAL ANNUAL DISCOUNTED NET BENEFITS

[Millions of 2017 dollars, 7% discount rate]

Scenario	Annual production	VMT	Total benefit impact	Total cost impact	Net benefits
Appearance Constraint	3,600 Cars, 400 LTVs	Low Case	−$3.1	−$3.3	$0.3
Appearance Constraint	3,600 Cars, 400 LTVs	High Case	−7.2	−3.3	−3.8
Appearance Constraint	7,200 Cars, 800 LTVs	Low Case	−6.2	−6.4	$0.2
Appearance Constraint	7,200 Cars, 800 LTVs	High Case	−14.3	−6.4	−8.0
Voluntary Seat Belts	3,600 Cars, 400 LTVs	Low Case	−10.9	−8.6	−2.3
Voluntary Seat Belts	3,600 Cars, 400 LTVs	High Case	−25.5	−8.6	−17.0
Voluntary Seat Belts	7,200 Cars, 800 LTVs	Low Case	−21.8	−16.9	−4.9
Voluntary Seat Belts	7,200 Cars, 800 LTVs	High Case	−51.1	−16.9	−34.2

The estimated net benefits for replica passenger cars under the final rule are negative in all cases except in the *Appearance Constraint* scenario under the low VMT assumption at a seven-percent discount rate, in which case net benefits are positive but very close to zero ($0.2 to $0.3 million). At a three-percent discount rate, net benefits are negative but near zero (−$1.8 million to −$0.8 million) in the *Appearance Constraint* scenario under the low VMT assumption. Net benefits are negative in the *Voluntary Seat Belts* scenario under the high VMT assumption at both discount rates (−$51.2 million to −$2.3 million). These results indicate that the final rule is expected to: (1) Generate negative safety impacts exceeding the corresponding production cost savings across most combinations of key assumptions in the analysis; or (2) generate negative safety impacts similar in magnitude to the corresponding production cost savings under the most conservative assumptions in the analysis.

XII. Effective Date

This final rule is effective immediately upon publication in the **Federal Register**. The Administrative Procedure Act (APA) states that a rule cannot be made effective less than 30 days after publication unless the rule falls under one of three exceptions. One of these exceptions is for a rule that ''grants or recognizes an exemption or relieves a restriction.'' [37] This rule would fall under this exception because it would create a process through which manufacturers could obtain exemptions to manufacture replica vehicles.

The only comment on the agency's proposed immediate effective date was from SEMA, which concurred with the proposal. NHTSA adopts the effective date as proposed.

XIII. Regulatory Notices and Analyses

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's administrative

[37] 5 U.S.C. 553(d)(1).

rulemaking procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866. This rule is considered ''of special note to the Department'' under DOT Order 2100.6A, *Rulemaking and Guidance Procedures,* and has been reviewed by the Office of the Secretary of Transportation. The amendments adopted by this final rule implement an exemption program mandated by § 24405 of the FAST Act for low-volume manufacturers, and involve a relatively small number of motor vehicles. There will be costs avoided by low-volume manufacturers when producing replica vehicles because the vehicles will not be required to meet all the Federal regulations and FMVSS applicable to new motor vehicles. Potential benefits could also include increased consumer surplus and increased incremental employment impacts among small manufacturers. Safety disbenefits could result from crashes if replica vehicles do not meet the vehicle safety standards, but NHTSA believes the vehicles will be used only occasionally due to their unique designs. NHTSA assumes that 40 low-volume manufacturers will produce between 4,000 and 8,000 replica vehicles annually, and the vehicles are expected to be driven, on average, no more than 2,280 miles per year. Further, NHTSA believes the vehicles will likely be equipped with critical safety equipment such as seat belts for reasons that include meeting conditions of insurance carriers and consumer demand. The program will not have a significant effect on the national economy, in part because of the small number of vehicles affected by this program.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires Federal agencies to consider the environmental impacts of major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the action.[38] The FAST Act requires NHTSA to establish an exemption program for replica vehicles, and this action implements that exemption program and the procedural mandates in the Act. The aspects of the program under the jurisdiction of NHTSA that could have environmental impacts include the exemption from the FMVSS (including those that affect the weight of the vehicle and thereby influence motor vehicle fuel economy) and the exemption from average fuel economy standards, both of which are specifically prescribed by statute. Although the FRE considers the impacts of this rule, NHTSA does not have the authority to consider alternatives that would subject replica vehicles covered under this program to the vehicle FMVSS or the average fuel economy standards in 49 U.S.C. 32902. Therefore, NHTSA is precluded from considering the environmental and safety impacts of those aspects of the replica vehicle exemption program in its rulemaking and is not required to address them in its Environmental Assessment.[39]

When a Federal agency prepares an environmental assessment, the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR parts 1500–1508) require it to ''[b]riefly discuss the purpose and need for the proposed action, alternatives [. . .], and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.'' [40] This section serves as the agency's Final Environmental Assessment (Final EA) for those aspects of the program for which NHTSA may exercise discretion.

This document sets forth the purpose of and need for this action. The purpose of this rulemaking is to implement the exemption program and the procedural mandates described in Section 24405 of the FAST Act, which directs NHTSA to exempt annually a limited number of replica motor vehicles manufactured or imported by low-volume manufacturers from the FMVSS that apply to motor vehicles, but not standards that apply to motor vehicle equipment. In addition, replica vehicles are exempt from the requirements of 49 U.S.C. 32304, 32502, and 32902, as well as from section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232). This action is needed to implement a program to grant the exemptions directed by the FAST Act for the manufacture of replica vehicles. NHTSA is also establishing labeling, consumer disclosure, and registration requirements to ensure adequate public awareness of and agency oversight over these vehicles.

The labeling, registration, and other procedural requirements of this final rule are not anticipated to have anything other than *de minimis* environmental impacts. These aspects of the program are largely ministerial in nature for replica vehicle manufacturers and importers and are not likely to change sales volumes. Any environmental impacts that could occur as a result of the manufacture or operation of these motor vehicles will occur as a function of the statute requiring exemption from the applicable FMVSS and average fuel economy standards, and NHTSA does not have sufficient discretion to alter these impacts meaningfully. Further, NHTSA assumes that only 40 low-volume manufacturers will produce between 4,000 and 8,000 replica vehicles annually, and the vehicles are expected to be driven, on average, no more than 2,280 miles per year. With regard to all aspects of the replica vehicle exemption program (including the exemption from the FMVSS and average fuel economy standards), these vehicles represent an extremely small fraction of overall motor vehicle sales and on-road vehicle miles traveled that will be disbursed throughout the country. As a result, they are unlikely to cause environmental impacts that could rise to any level of significance.

NHTSA invited public comments on the contents and tentative conclusions of the Draft EA. No public comments addressing the Draft EA were received. Furthermore, none of the public comments that were received addressed any issues related to the human environment that would be relevant to the Final EA.

Based on the foregoing, NHTSA concludes that the final rule will have only a *de minimis* impact on the quality of the human environment. Based on the Final EA, NHTSA concludes that implementation of any of the alternatives considered in this notice, including the final regulations, will not have a significant effect on the human environment and that a ''finding of no significant impact'' is appropriate. This statement constitutes the agency's ''finding of no significant impact,'' and an environmental impact statement will not be prepared.[41]

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish an NPRM or final rule, generally it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental

[38] 42 U.S.C. 4332(2)(C).

[39] *See* 40 CFR 1501.1(a)(5).

[40] 40 CFR 1501.5(c)(2). The Draft Environmental Assessment (Draft EA) included as part of the NPRM quoted from and cited to the CEQ NEPA implementing regulations prior to their revision earlier this year. 85 FR 43304 (Jul. 16, 2020) (eff. Sep. 14, 2020). Citations and references to the CEQ NEPA implementing regulations have been updated as appropriate to reflect these revisions.

[41] 40 CFR 1501.6(a).

jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). A regulatory flexibility analysis is not required if the head of the agency certifies that the action would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

In compliance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this final rule on small entities and has prepared a Final Regulatory Flexibility Analysis (FRFA).

This final rule will impact small entities that are low-volume manufacturers that choose to produce replica vehicles.[42] A small entity falls under North American Industry Classification System (NAICS) Nos. 336111, 336112, and 336120 for Automobile Manufacturing, Light Truck and Utility Vehicle Manufacturing, and Heavy Duty Truck Manufacturing. Pursuant to 13 CFR 121.201, which establishes size standards regulations to define small businesses, entities in these industries with 1,500 or fewer employees are considered small business concerns. NHTSA expects that most, if not all, replica manufacturers will have 1,500 or fewer employees. NHTSA estimates that up to 40 small manufacturers will want to register as low-volume manufacturers of replica vehicles, but that about 10 would be foreign replica manufacturers.[43] Since the Small Business Administration's regulations limit Regulatory Flexibility Act applicability to small businesses that operate primarily within the United States, foreign manufacturers that would participate in the replica vehicle program are not covered by the Act.[44] Therefore, for purposes of the FRFA, this final rule is expected to impact 30 small entities.

Until the FAST Act was enacted, all low-volume manufacturers of replica vehicles were subject to virtually the same Safety Act requirements as the largest manufacturers when producing new motor vehicles. Generally, in FMVSS rulemaking, small manufacturers are given more lead time to comply with new FMVSS requirements, such as by having longer lead times or phase-in timelines to comply with new requirements,[45] and they can also petition for exemptions from certain FMVSS for limited periods of time on certain specific grounds.[46] However, notwithstanding the flexibility regarding compliance dates and limited-period exemptions, until the FAST Act, low-volume manufacturers of replica vehicles had the same responsibilities as larger manufacturers to certify their vehicles as complying with all applicable FMVSS. These FMVSS comprise standards applying to ''equipment'' and standards applying to the ''vehicle'' as a unit.

The FAST Act allows registered replica vehicle manufacturers to manufacture vehicles that are exempt from meeting the ''vehicle'' FMVSS. NHTSA estimates that involvement in the part 586 exemption program will save low-volume manufacturers of replica passenger cars and light trucks, MPVs, and buses (LTVs) between $3.4 million and $17.2 million at a three-percent discount rate (between $3.3 million and $16.8 million at a seven-percent discount rate) annually resulting from the elimination of the requirement to comply with the vehicle FMVSS, fuel economy standards, bumper standards, and labeling requirements.[47] This means that each replica vehicle manufacture will, on average, experience cost savings of between $85,000 and $430,000 annually at a three-percent discount rate and between $82,000 and $420,000 annually at a seven-percent discount rate.[48] NHTSA expects this cost savings to have a significant positive economic impact on the 30 regulated small entities.

According to guidance provided by the SBA's Office of Advocacy, to determine whether the number of small entities significantly impacted is substantial, an agency may need to look not only at the number of significantly impacted entities, but also at the percentage of affected small entities so impacted.[49] Since the rule is expected to significantly economically impact 100 percent of the 30 regulated small entities, this would be a substantial number. Therefore, the replica vehicle program is expected to significantly economically affect a substantial number of small entities. Accordingly, NHTSA has prepared this Final Regulatory Flexibility Act analysis.

Overview of the Objectives of and Legal Basis for the Final Rule

NHTSA is issuing this final rule to implement an exemption mandated under the National Traffic and Motor Vehicle Safety Act (Safety Act) (49 U.S.C. 30114(b)), as amended by the Fixing America's Surface Transportation Act (the FAST Act). Section 30114(b) directs NHTSA, by delegation, to exempt not more than 325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer. The exemption is limited to the FMVSS applicable to motor vehicles, not motor vehicle equipment. The Safety Act, as amended, requires that, to qualify for an exemption, the low-volume manufacturer must ''register with [NHTSA] at such time, in such manner, and under such terms that [NHTSA] determines appropriate'' (49 U.S.C. 30114(b)(2)), and that NHTSA require certain labeling and reporting requirements (49 U.S.C. 30114(b)(3)).

NHTSA is issuing this final rule to establish 49 CFR part 586 to implement the replica motor vehicle exemption.[50] Part 586 establishes the requirements and procedures for the registration of low-volume manufacturers as replica motor vehicle manufacturers and

[42] The FAST Act amended the Safety Act (49 U.S.C. 30114(7)(A)) to define ''low-volume manufacturer'' as ''a motor vehicle manufacturer, other than a person who is registered as an importer under section 30141 of this title, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.''

[43] This assumption is based on the percent of all passenger cars sold in the US but are manufactured outside the US. Between January and August 2018, 76.1% of vehicles sold in the U.S. were produced domestically and 23.9% were imported. ''U.S. light-vehicle sales by nameplate, August & 8 months.'' Automotive News. September 10, 2018, pp. 56–7.

[44] 13 CFR 121.105(a).

[45] 49 CFR 571.8(b). Unless contrary to statute or NHTSA expressly determines otherwise, intermediate and final-stage manufacturers and alterers are provided an additional year to meet a standard or an amendment to a standard.

[46] Pursuant to 49 CFR part 555, a manufacturer may petition for a temporary exemption on the bases of substantial economic hardship, making easier the development or field evaluation of new motor vehicle safety or impact protection, or low-emission vehicle features, or that compliance with a standard would prevent it from selling a vehicle with an overall level of safety or impact protection at least equal to that of nonexempted vehicles.

[47] Additional detail on these estimates is provided in the Final Regulatory Evaluation.

[48] NHTSA divided the total cost savings by 40 because these estimates are based on NHTSA's assumption that there will be a total of 40 replica manufacturers producing, on average, 200 vehicles per year. In addition to the 30 replica manufacturers that NHTSA expects to be considered small businesses by SBA, the total cost savings also include savings to an estimated 10 replica manufacturers that would be manufacturers not operating primarily in the U.S.

[49] U.S. Small Business Administration Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, 21–22 (August 2017), available at *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf* (last accessed Oct. 15, 2018).

[50] The FAST Act replica motor vehicle provision is not self-executing. That is, the Secretary must take steps to implement it.

establishes the duties of the manufacturers.

Description and Estimate of the Number of Small Entities to Which the Rule Will Apply; Compliance Impacts

This final rule will affect manufacturers who have a total annual worldwide production of 5,000 vehicles or less who wish to produce replica vehicles. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, vehicle manufacturers would fall under North American Industry Classification (NAICS) No. 336111, Automobile Manufacturing, which has a size standard of 1,500 employees. Using the size of 1,500 employees or fewer, NHTSA estimates that most, if not all, of the manufacturers that will seek to produce replica vehicles will be small businesses. NHTSA estimates that there will be approximately 40 manufacturers (30 operating primarily in the U.S.) that will qualify for and will participate in the replica vehicle exemption program.

Although this final rule will significantly affect small manufacturers, we do not anticipate that it will have a negative economic impact. Instead, this final rule will reduce compliance costs for the small businesses that produce replica vehicles under the exemption program. NHTSA estimates that manufacturers will save between $3.4 million and $17.2 million at a three-percent discount rate (between $3.3 million and $16.8 million at a seven-percent discount rate) annually. The cost savings result from low-volume manufacturers no longer having to conform their vehicles to the ''vehicle'' FMVSS.

A Description of the Projected Reporting, Record Keeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The final rule contains reporting, record keeping and other compliance requirements to implement the replica vehicle program. All the reporting and record keeping requirements discussed below are mandated or contemplated by the FAST Act or are necessary to carrying out the statute.

First, in accordance with the FAST Act, low-volume manufacturers wishing to qualify for an exemption must register with NHTSA in accordance with part 586. The FAST Act mandates this registration requirement in § 30114(b)(1)(B)(2), specifying that ''a low-volume manufacturer shall register with [NHTSA] at such time, in such manner, and under such terms that [NHTSA] determines appropriate.'' NHTSA estimates that it would take each manufacturer 10 hours to draft and compile the submission. At an estimated cost of $59.75 per hour,[51] this burden would cost each manufacturer $597.50 one time for each original vehicle the manufacturer seeks to replicate.

Second, in accordance with the FAST Act, manufacturers of replica vehicles are required to submit annual reports. The annual reports are required by § 30114(b)(1)(C), which specifies that the annual report include the number and description of the motor vehicles exempted and a list of the exemptions described on a permanent label required by § 30114(b)(3)(A) (described below). The final rule requires that the annual report be submitted online. In lieu of a requirement that registrants renew their registrations, the final rule only requires registrants to report to NHTSA if they will be producing the same replica motor vehicles the following calendar year. NHTSA estimates that compiling and submitting the annual report will take two hours and involve primarily administrative skills. NHTSA estimates that labor to compile the report will cost $59.75 per hour, for a total cost to compile the report of $119.50.[52]

Third, in accordance with the FAST Act, the final rule requires the registrants to disclose information to consumers. Because the replica vehicles would be exempt from complying with current FMVSS, it is important that the consumer understand the reduced level of safety provided by the vehicle. Pursuant to § 30114(b)(3)(A), the final rule requires registrants to affix a permanent label to the vehicle identifying the specified standards and regulations from which the vehicle is exempt, stating that the vehicle is a replica, and designating the model year such vehicle replicates. Pursuant to § 30114(b)(3)(B), the final rule requires registrants to provide written notice of the exemption to the dealer and the first purchaser of the vehicle for purposes other than resale by affixing a temporary label to each vehicle. NHTSA estimates that the permanent labels would cost $1 per vehicle and the temporary labels would cost $1 per vehicle. If each manufacturer produces 200 vehicles, the total cost per manufacturer would be $400 for both the permanent labels and the temporary labels.

An Identification, to the Extent Practicable, of All the Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Final Rule

NHTSA does not know of any Federal rules that duplicate, overlap, or conflict with this final rule.

A Description of Any Significant Alternatives to the Rule That Accomplish the Stated Objectives of the Applicable Statutes and Minimize Any Significant Economic Impact of the Final Rule on Small Entities

The FAST Act provision directing the establishment of the replica exemption program prescribes specific requirements that limit NHTSA's discretion to adopt regulatory approaches. However, for the purpose of evaluating regulatory alternatives under the requirements of the Regulatory Flexibility Act, NHTSA considered alternatives to lessen the economic impact of the final rule on small entities.

First, NHTSA decided against requiring that replica motor vehicles resemble not only the original vehicle's exterior, but also its interior (as proposed in the NPRM). NHTSA has not quantified the impact of this approach in the final rule but has concluded that it would decrease the burden on small entities.

Second, NHTSA proposed to require registrants to submit images with each registration and documentation confirming that the replica vehicle will have the same dimensions (height, width, and length) as the original vehicle. In this final rule, NHTSA decided to provide a 10 percent leeway in the dimensions. NHTSA believes the rule strikes an appropriate balance between ensuring that the program is

[51] The hourly wage is estimated to be $42.30 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2020, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed October 12, 2021. The Bureau of Labor Statistics estimates that wages represent 70.8 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2021). Employer Costs for Employee Compensation—September 2021. *https://www.bls.gov/news.release/archives/ecec_12162021.pdf,* last accessed January 6, 2021. Therefore, NHTSA estimates the total hourly compensation cost to be $59.75.

[52] The hourly wage is estimated to be $42.30 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2020, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed October 12, 2021. The Bureau of Labor Statistics estimates that wages represent 70.8 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2021). Employer Costs for Employee Compensation—September 2021. *https://www.bls.gov/news.release/archives/ecec_12162021.pdf,* last accessed January 6, 2021. Therefore, NHTSA estimates the total hourly compensation cost to be $59.75.

limited to vehicles that resemble previously-made vehicles, while not unduly burdening low-volume manufacturers. The 10 percent margin also allows more flexibility to manufacturers to incorporate modern amenities and safety features in the interior.

Third, this final rule does not require applicants to submit actual documentation to demonstrate they own or have license to the intellectual property (IP) necessary to manufacture a replica motor vehicle. Instead, they simply must certify to this fact.

Fourth, this final rule reduces the amount of information replica manufacturers must disclose to members of the public, compared to the NPRM's proposal.

Accordingly, NHTSA has concluded this final rule minimizes burdens on small entities to the extent consistent with the Safety Act, the FAST Act, and the Regulatory Flexibility Act, and that there are no further reasonable alternative approaches that would further minimize burden on small entities.

E.O. 13132 (Federalism)

NHTSA has examined this final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concludes that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule makes no determination regarding the preemptive effect of the exemption program for replica motor vehicles manufactured or imported by low-volume manufacturers.

The FAST Act provision directing NHTSA to allow registered low-volume manufacturers to produce replica vehicles contains two unique provisions that have preemption implications.[53] Although the agency did not explicitly request comment on its characterizations of these provisions in the NPRM, NHTSA received comments on the second provision.

The first preemption issue is implicated by 49 U.S.C. 30114(b)(6), which provides protection to the original manufacturer, its successor or assignee, or current owner, who grants a license or otherwise transfers rights to a low-volume manufacturer to produce replicas of vehicles. The Act states that such persons shall incur no liability to any person or entity under Federal or State statute, regulation, local ordinance, or under any Federal or State common law for such license or assignment to a low-volume manufacturer. This legislative directive is set forth in the FAST Act and NHTSA has not interpreted it. Therefore, this final rule has no effect on that directive. The agency received no comments on this issue.

NHTSA received five comments related to the second preemption issue—its interpretation of the FAST Act provision. This provision states that ''nothing in [the exemption for low-volume manufacturers subsection of the Act] shall be construed to preempt, affect, or supersede any State titling or registration law or regulation for a replica motor vehicle, or exempt a person from complying with such law or regulation.'' [54] In the NPRM, NHTSA interpreted this provision to mean that NHTSA's requirements for replica motor vehicles are intended to be minimum safety requirements only, and that States would be permitted to have their own replica motor vehicle safety standards for vehicles titled or registered in their State.[55] That is, the agency interpreted the provision to mean that ''nothing'' about the program would preempt ''any State titling or registration law or regulation,'' even if those laws concerned the safety performance of the vehicle. All comments addressing this issue disagreed with the agency's interpretation of this provision, although NHTSA did not explicitly request comment on this issue and did not receive comment from any State or organization representing States.

The comments on this issue, submitted by the Specialty Equipment Market Association (SEMA), Vehicle Services Consulting, Inc. (VSCI), the National Automobile Dealers Association (NADA), Edelbrock LLC, and Morgan Motor Company, are largely consistent in their views.[56] Each takes the position that the FAST Act creates an exemption from the FMVSS for covered replica vehicles and that the NPRM incorrectly interpreted the proposed rule as creating a minimum standard for replica vehicles. An exemption, the commenters contend, preempts State statutes and common law tort obligations for the covered vehicles; therefore, due to the exemption, States may not create safety standards for replica vehicles through their titling and registration laws. Interpreting the FAST Act otherwise, they argue, would frustrate Congress's intent to provide compliance relief for replica vehicle manufacturers.

After consideration of the comments, NHTSA concurs that Section 24405 of the FAST Act directs the creation of an annual exemption for certain replica motor vehicles from the FMVSS, and that this rule establishes the eligibility criteria for that exemption. Neither the statute nor the rule speaks to whether or not an exemption establishes a minimum safety requirement for these vehicles, and NHTSA does not believe it is necessary provide its view on this issue here. However, though the agency has changed its view regarding whether this rule constitutes a minimum standard, the agency is refraining from making a determination on the preemptive effect of this exemption, the operation of which is governed by the statutory language rather than NHTSA's action in this rulemaking. Accordingly, any necessary preemption determinations are reachable even in the absence of an express agency view on this general issue as they remain adjudicable on a case-by-case basis, such as in the context of a judicial proceeding.

After consideration of the comments, and with the benefit of the additional time that has passed since the circulation of a prior unpublished final rule, NHTSA now rescinds its interpretation of the preemptive effect of this exemption program, including its prior characterization of the replica exemption as a minimum requirement and its later reflections in the unpublished final rule.[57] The FAST Act contains an express provision that addresses preemption at 49 U.S.C. 30114(b)(9), and the agency's views on the preemptive effect of the replica exemption are not essential to the execution of the exemption program. Therefore, it is unnecessary in this rulemaking for the agency to interpret the preemptive effect of this exemption.

Under E.O. 13132,[58] an agency may not promulgate a regulation that preempts State law, unless the agency complies with certain requirements. Those requirements, however, do not apply to the present regulation as the agency did not make any preemption determination. This final rule contains

[53] NHTSA does not believe regulation is necessary to implement those provisions.

[54] 49 U.S.C. 30114(b)(9).

[55] 85 FR 809.

[56] *See* Docket No. NHTSA–2019–0121–0016; NHTSA–2019–0121–0011; NHTSA–2019–0121–0024; NHTSA–2019–0121–0023; NHTSA–2019–0121–0013.

[57] This rulemaking creates a new exemption program for replica motor vehicles. Therefore, there are no serious reliance interests implicated by NHTSA's decision not to express a view on this issue.

[58] 64 FR 43255, August 10, 1999.

no regulatory text or interpretation on preemption.

As noted above, Section 24405 of the FAST Act directs NHTSA by delegation to create an annual exemption for certain replica motor vehicles from the FMVSS applicable to motor vehicles. NHTSA concludes that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process.

E.O. 12988 (Civil Justice Reform)

When promulgating a regulation, E.O. 12988, ''Civil Justice Reform'' (61 FR 4729; February 7, 1996), specifically requires that the Agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes that the preemptive effect of this rule is discussed above in connection with E.O. 13132. NHTSA has also considered whether this rulemaking would have any retroactive effect, and concludes that it does not. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E.O. 13609: Promoting International Regulatory Cooperation

Under E.O. 13609 (77 FR 26413, May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Sections 3 and 4 of E.O. 13609 direct an agency to conduct a regulatory analysis and ensure that a proposed rule does not cause unnecessary obstacles to foreign trade. This requirement applies if a rule constitutes a significant regulatory action, or if a regulatory evaluation must be prepared for the rule.

NHTSA has analyzed this action under the policies and agency responsibilities of E.O. 13609 and has determined that this action would have no effect on international regulatory cooperation.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards to carry out policy objectives or activities determined by the agencies and departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. NHTSA did not find any voluntary consensus standards that would apply to this rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with the applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why the agency did not adopt the alternative.

This rule is not anticipated to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of 100 million ($154 million when adjusted for inflation), annually.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The Information Collection Requests (ICR) for a proposed new information collection and proposed revisions to the existing information collections were forwarded to the Office of Management and Budget (OMB) for review and comment when the NPRM was published. As OMB deferred review while NHTSA reviewed the comments to the NPRM, NHTSA has resubmitted the ICR for this final rule.

OMB has tentatively assigned the following control numbers. Approval of the control numbers are subject to OMB's review of NHTSA's ICR addressing public comments on the NPRM.

a. OMB Control No: 2127–0043, Title: Manufacturer Identification—49 CFR part 566;

b. OMB Control No: 2127–0510, Title: Consolidated Labeling Requirements for 49 CFR parts 565 and 567;

c. OMB Control No: 2127–0746, Title: 49 CFR part 586, Replica Motor Vehicles.

NHTSA's ICR describes the nature of the information collections and their expected burden. As described in the NPRM, the FAST Act mandated many registration, labeling and reporting requirements. This final rule establishes new collection of information requirements to implement those FAST Act provisions, requiring registrants to provide information to NHTSA and to dealers and consumers pertaining to registration, annual reporting, labeling, and written notification to dealers and owners. This final rule also makes changes to existing information collections for manufacturer identification, VIN requirements, and certification labeling. NHTSA has submitted supporting statements to

OMB explaining how the final rule's collections of information respond to the comments received from the public. None of the changes made in this final rule affect the estimates in the NPRM of these requirements.

Plain Language

E.O. 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please send them to the NHTSA officials listed in the ''For Further Information'' section at the beginning of this document.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

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 organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects

49 CFR Part 565

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 566

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 586

Motor vehicle safety, Reporting and recordkeeping requirements, Labeling, Replica motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows:

PART 565—VEHICLE IDENTIFICATION NUMBER (VIN) REQUIREMENTS

■ 1. The authority citation for part 565 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30114, 30115, 30117, 30141, 30146, 30166, and 30168; delegation of authority at 49 CFR 1.95.

■ 2. Revise § 565.12 to read as follows:

§ 565.12 Definitions.

(a) *Federal Motor Vehicle Safety Standards Definitions.* Unless otherwise indicated, all terms used in this part that are defined in 49 CFR 571.3 are used as defined in 49 CFR 571.3.

(b) *Other definitions.* As used in this part—

Body type means the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo carrying features and the roofline (*e.g.,* sedan, fastback, hatchback).

Check digit means a single number or the letter X used to verify the accuracy of the transcription of the vehicle identification number.

Engine type means a power source with defined characteristics such as fuel utilized, number of cylinders, displacement, and net brake horsepower. The specific manufacturer and make shall be represented if the engine powers a passenger car or a multipurpose passenger vehicle, or truck with a gross vehicle weight rating of 4,536 kg (10,000 lb) or less.

High-volume manufacturer, for purposes of this part, means a manufacturer of 1,000 or more vehicles of a given type each year.

Incomplete vehicle means an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors, or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.

Line means a name that a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type.

Low-volume manufacturer, for purposes of this part, means a manufacturer of fewer than 1,000 vehicles of a given type each year.

Make means a name that a manufacturer applies to a group of vehicles or engines.

Manufacturer means a person—

(1) Manufacturing or assembling motor vehicles or motor vehicle equipment; or

(2) Importing motor vehicles or motor vehicle equipment for resale.

Manufacturer identifier means the first three digits of a VIN of a vehicle manufactured by a high-volume manufacturer, and the first three digits of a VIN and the twelfth through fourteenth digits of a VIN of a vehicle manufactured by a low-volume manufacturer.

Model means a name that a manufacturer applies to a family of vehicles of the same type, make, line, series and body type.

Model year means the year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.

Original model year of a replicated vehicle means the stated model year of a vehicle that has been replicated pursuant to 49 CFR part 586.

Plant of manufacture means the plant where the manufacturer affixes the VIN.

Replica motor vehicle means a motor vehicle meeting the definition of replica motor vehicle in 49 CFR part 586.

Replica model year means the calendar year in which a replica motor vehicle was manufactured.

Series means a name that a manufacturer applies to a subdivision of a ''line'' denoting price, size or weight identification and that is used by the manufacturer for marketing purposes.

Trailer kit means a trailer that is fabricated and delivered in complete but unassembled form and that is designed to be assembled without special machinery or tools.

Type means a class of vehicle distinguished by common traits, including design and purpose. Passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, low speed vehicles, and motorcycles are separate types.

VIN means a series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes.

■ 3. In § 565.15(b), amend Table 1—Type of Vehicle and Information Decipherable by adding an entry for ''Replica motor vehicle'' after the entry for ''Low speed vehicle'' to read as follows:

§ 565.15 Content requirements

(b) * * *

Table I—Type of Vehicle and Information Decipherable

* * * * *

Replica motor vehicle: The make, model, and model year of the original replicated vehicle; and the information listed in this table for the vehicle's type classification (*e.g.,* if the replica meets the definition for passenger car in 49 CFR 571.3, the following information is required: make, line, series, body type, engine type, and all restraint devices and their locations).

* * * * *

■ 4. In § 565.26, revise paragraph (d), as follows:

§ 565.26 Reporting requirements.

* * * * *

(d) The information required under paragraph (c) of this section shall be submitted at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information, or if information concerning vehicle characteristics sufficient to specify the VIN code is unavailable to the manufacturer by that date, then within one week after that information first becomes available. The information shall be submitted to *https://vpic.nhtsa.dot.gov/* or to: Administrator, National Highway Traffic Safety Administration, ATTN: VIN Coordinator, 1200 New Jersey Avenue SE, Washington, DC 20590. Manufacturers of replica motor vehicles shall furnish the information by using the portal at *https://vpic.nhtsa.dot.gov/*.

PART 566—MANUFACTURER IDENTIFICATION

■ 5. The authority citation for part 566 is revised to read as follows:

Authority: National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30114(b), 30166) and Sec. 24405(a) of the Fixing America's Surface Transportation Act (Pub. L. 114–94); delegation of authority at 49 CFR 1.95.

■ 6. Amend § 566.5 by revising the introductory text and adding paragraph (c)(4) to read as follows:

§ 566.5 Requirements

Each manufacturer of a motor vehicle (other than a replica motor vehicle), and each manufacturer of covered equipment, shall furnish the information specified in paragraphs (a) through (c) of this section to *https://vpic.nhtsa.dot.gov/* or to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Manufacturers of replica motor vehicles shall furnish the information by using the portal at *https://vpic.nhtsa.dot.gov/*.

* * * * *

(c) * * *

(4) In the case of replica motor vehicles, the manufacturer shall include, in the description of each type of motor vehicle it manufactures, a designation that the vehicle is a replica motor vehicle.

PART 567—CERTIFICATION

■ 7. The authority citation for part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30114, 30115, 30117, 30166, 32504, 33101–33104, 33108 and 33109; delegation of authority at 49 CFR 1.95.

■ 8. Revise § 567.1 to read as follows:

§ 567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the certification label to be affixed to motor vehicles as required by the National Traffic and Motor Vehicle Safety Act, as amended (the Vehicle Safety Act) (49 U.S.C. 30114 and 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (the Cost Savings Act) (49 U.S.C. 30254 and 33109), to address certification-related duties and liabilities, and to provide the consumer with information to assist them in determining which of the Federal motor vehicle safety standards (part 571 of this chapter), bumper standards (part 581 of this chapter), and Federal theft prevention standards (part 541 of this chapter), are applicable to the vehicle.

■ 9. Amend § 567.3 by adding in alphabetical order a definition for ''replica motor vehicle,'' to read as follows:

§ 567.3 Definitions

* * * * *

Replica motor vehicle means a motor vehicle meeting the definition of replica motor vehicle in 49 CFR part 586.

■ 10. Revise § 567.4(a) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

(a) Each manufacturer of motor vehicles (except replica motor vehicles and vehicles manufactured in two or more stages) shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (g) of this section.

* * * * *

■ 11. Add § 567.8 to read as follows:

* * * * *

§ 567.8 Requirements for manufacturers of replica motor vehicles.

(a) Each manufacturer of a replica motor vehicle shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (e) of this section.

(b) The label shall be riveted or permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(c) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. If none of the preceding locations is practicable, notification of that fact, together with drawings or photographs showing a suggested alternate location in the same general area, shall be submitted for approval to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(d) The lettering on the label shall be of a color that contrasts with the background of the label.

(e) The label shall contain the following information and statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(1) Name of manufacturer: Except as provided in paragraphs (e)(1)(i) and (ii) of this section, the full corporate or individual name of the actual assembler of the vehicle shall be spelled out, except that such abbreviations as ''Co.'' or ''Inc.'' and their foreign equivalents, and the first and middle initials of individuals, may be used. The name of the manufacturer shall be preceded by

the words ''Manufactured By'' or ''Mfd By.''

(2) Month and year of manufacture: This shall be the time during which work was completed at the place of main assembly of the vehicle. It may be spelled out, as ''June 2000,'' or expressed in numerals, as ''6/00.''

(3) ''Gross Vehicle Weight Rating'' or ''GVWR'' followed by the appropriate value in pounds, which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the number of the vehicle's designated seating positions.

(4) ''Gross Axle Weight Rating'' or ''GAWR,'' followed by the appropriate value in pounds, for each axle, identified in order from front to rear (*e.g.,* front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may, at the option of the manufacturer, be stated as a single value, with the label indicating to which axles the ratings apply.

(i) *Examples of combined ratings: GAWR:*

(A) All axles—2,400 kg (5,290 lb.) with LT245/75R16(E) tires.

(B) Front—5,215 kg (11,500 lb.) with 295/75R22.5(G) tires.

(C) First intermediate to rear—9,070 kg (20,000 lb.) with 295/75R22.5(G) tires.

(ii) [Reserved].

(5) The following statement: ''This vehicle is a replica motor vehicle that replicates a [insert make and model of the replicated motor vehicle] originally manufactured in model year [insert year].''

(6) Either:

(i) The statement: ''This replica motor vehicle is exempt from the following Federal motor vehicle safety, theft prevention, and bumper standards in effect on [insert the date of manufacture of the replica motor vehicle] for [insert replica's type of motor vehicle (*e.g.,* passenger cars)]: [insert a list of all standards from which the vehicle exempt pursuant to 49 U.S.C. 30114(b)].'' (The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal.''); or

(ii) The statement: ''This replica motor vehicle is exempt from the Federal motor vehicle safety, theft prevention, and bumper standards in effect on [insert the date of manufacture of the replica motor vehicle] for [insert replica's type of motor vehicle (*e.g.,* passenger cars)] that are listed on the label found in [insert location of label listing standards from which the vehicle is exempt under 49 U.S.C. 30114(b)]''; and

(7) Vehicle identification number.

(f) If the label required under paragraph (a) includes the statement found in paragraph (e)(6)(ii) of this section, the manufacturer must affix to the replica motor vehicle a second label that meets the following criteria:

(1) The label shall be riveted or permanently affixed to the vehicle in such a manner that it cannot be removed without destroying or defacing it;

(2) The label shall be affixed to the location identified in paragraph (e)(6)(ii).

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high: ''This replica motor vehicle is exempt from the following Federal motor vehicle safety, theft prevention, and bumper standards in effect on [insert the date of manufacture of the replica motor vehicle] for [insert replica's type of motor vehicle (*e.g.,* passenger cars)]: [insert a list of all standards for which the vehicle is exempt pursuant to 49 U.S.C. 30114(b)].''

■ 12. Add part 586 to read as follows:

PART 586—REPLICA MOTOR VEHICLES

Sec.

Authority: 49 U.S.C. 30112 and 30114; delegation of authority at 49 CFR 1.95.

§ 586.1 Scope.

This part specifies requirements and procedures under 49 U.S.C. 30114(b) for the registration of low-volume manufacturers as replica motor vehicle manufacturers and establishes the duties of the manufacturers.

§ 586.2 Purpose.

The purpose of this part is to implement 49 U.S.C. 30114(b) to exempt not more than 325 replica motor vehicles per year that are manufactured or imported by low-volume manufacturers from certain requirements for motor vehicles. This part specifies eligibility requirements for low-volume manufacturers to qualify for the exemption. They must register with NHTSA as a replica motor vehicle manufacturer according to procedures for the registration of such manufacturers, meet content and format requirements for registration submissions, and meet requirements for updating registrations. This part also provides for the revocation of registrations and sets forth labeling, reporting, and other requirements. Manufacturers are not exempted under 49 U.S.C. 30114(b) unless they register with NHTSA pursuant to this part 586.

§ 586.3 Applicability.

This part applies to low-volume manufacturers that wish to register with NHTSA as a replica motor vehicle manufacturer, and to manufacturers registered as replica motor vehicle manufacturers.

§ 586.4 Definitions.

All terms in this part that are defined in 49 U.S.C. 30102 and in 49 CFR 571.3 are used as defined therein.

Low-volume manufacturer means a motor vehicle manufacturer, other than a person who is registered as an importer under 49 U.S.C. 30141, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 vehicles.

Original model year of a replicated vehicle means the stated model year of a vehicle that has been replicated pursuant to 49 CFR part 586.

Replica motor vehicle means a motor vehicle that—

(1) Is produced by a manufacturer meeting the definition of replica motor vehicle manufacturer under part 586 that has not manufactured 325 replica motor vehicles in the current calendar year;

(2) Is intended to resemble the body of another motor vehicle that was manufactured for consumer sale not less than 25 years before the manufacture of the replica motor vehicle;

(3) Is manufactured in a single stage; and

(4) Is either:

(i) Manufactured under a license for all of the intellectual property rights of the motor vehicle that is intended to be replicated, including, but not limited to, product configuration, trade dress, trademark, and patent, from the original manufacturer, or its successors or assignees; or,

(ii) Manufactured by a current owner of such intellectual property, including,

but not limited to, product configuration trade dress, trademark, and patent rights.

Replica motor vehicle manufacturer means a low-volume manufacturer, that is registered as a replica motor vehicle manufacturer pursuant to the requirements in this part.

Replica model year means the calendar year in which a replica motor vehicle was manufactured.

§ 586.5 General requirements.

(a) Each manufacturer wishing to register as a replica motor vehicle manufacturer must have a calendar year, worldwide production, including any by a parent or subsidiary of the manufacturer, of not more than 5,000 motor vehicles, and must not be a registered importer under 49 CFR part 592. Only one registration is permitted for manufacturers sharing common ownership. If a manufacturer wishes to manufacture replica motor vehicles and share common ownership with a registered replica motor vehicle manufacturer, it may only do so after the registered replica vehicle manufacturer submits an updated registration submission indicating that the exemption for 325 replica vehicles will be divided between the manufacturers. Replica manufacturers sharing common ownership will be limited to a total of 325 replica vehicles. An update to a registration to add a manufacturer under common ownership shall allocate the exemption for 325 replica vehicles between the manufacturers. An update to the registration to adjust the allocation must be made pursuant to § 586.9.

(b) Each manufacturer wishing to manufacture replica motor vehicles under this program must be registered, according to the requirements in § 586.6, as a replica motor vehicle manufacturer for the calendar year in which the replica motor vehicle is manufactured.

(c) Each replica motor vehicle manufacturer shall meet all statutory and regulatory requirements, including requirements in 49 CFR part 567, applicable to motor vehicle manufacturers, except:

(1) 49 U.S.C. 30112(a) regarding the Federal motor vehicle safety standards applicable to vehicles (as opposed to standards applicable to motor vehicle equipment) in effect on the date of manufacture of the replica motor vehicle; and

(2) 49 U.S.C. 32304, 32502, 32902 and 15 U.S.C. 1232.

(d) Each replica motor vehicle manufacturer shall:

(1) Meet all the requirements set forth in this part;

(2) Not manufacture more than 325 replica motor vehicles in a calendar year; and,

(3) Meet 49 U.S.C. 30112(a) regarding the Federal motor vehicle safety standards applicable to equipment items installed on the vehicle.

(e) Each replica motor vehicle, as manufactured, shall resemble the original replicated vehicle.

(f) An exemption granted by NHTSA may not be transferred to any other person, and shall expire at the end of the calendar year for which it was granted with respect to any volume authorized by the exemption that was not applied by the replica motor vehicle manufacturer to vehicles built during that calendar year.

§ 586.6 Registration.

(a) A manufacturer may register under this part as a manufacturer of replica motor vehicles if:

(1) The manufacturer is not registered as an importer under 49 CFR part 592;

(2) The manufacturer's annual worldwide production, including any by a parent or subsidiary of the manufacturer, is not more than 5,000 motor vehicles;

(3) The manufacturer has submitted manufacturer identification information pursuant to part 566.

(b) To register as a replica motor vehicle manufacturer, a manufacturer must submit, using the NHTSA Product Information Catalog and Vehicle Listing (vPIC) platform (*https://vpic.nhtsa.dot.gov/*) its name, address, and email address, and the following:

(1) Information sufficient to establish:

(i) That the manufacturer's annual world-wide production, including any by a parent or subsidiary of the manufacturer, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration; and,

(ii) That the manufacturer is not registered as an importer under 49 CFR part 592;

(2) A statement identifying the original vehicle(s) the manufacturer intends to replicate by make, model, and model year;

(3) Information sufficient to establish that the replica vehicle(s) the manufacturer will replicate is intended to resemble the body of the original vehicle, including:

(i) The images of the front, rear, and side views of the exterior of the original vehicle;

(ii) If the manufacturer has previously replicated the original vehicle(s), images of the front, rear, and side views of the exterior of a representative replica motor vehicle;

(iii) If the manufacturer has not previously replicated the original vehicle(s), design plans for the replica vehicles;

(iv) Information to show that the replica motor vehicle will have a height, width, and length within 10 percent of the original motor vehicle and,

(v) If the replica motor vehicle deviates from the height, width, or length of the original motor vehicle by more than 10 percent, an explanation of why such deviations were necessary.

(4) A certification that the manufacturer has determined the intellectual property rights required, and that the manufacturer has obtained all licenses and permissions necessary to legally produce the replica motor vehicle described in the application, or is the owner of such intellectual property.

(5) A statement certifying that the manufacturer will not manufacture more than the number of replica motor vehicles covered by the requested exemption, a number not more than 325 replica motor vehicles in a calendar year; and,

(6) All information required by part 566 to identify itself to NHTSA as a motor vehicle manufacturer.

(c) A manufacturer is not considered registered under this part 586 unless:

(1) The registration is approved; or,

(2) The registration is deemed approved under § 586.9.

(d) A replica motor vehicle manufacturer shall submit an updated registration submission prior to beginning manufacture of any replica vehicle model(s) not covered by their existing registration and will not begin manufacturing those additional replica vehicle model(s) until the registration is either approved or deemed approved as specified under § 586.9.

(e) A registrant need not reapply annually if the registrant seeks to manufacture the same replica vehicles (make, model and model year) for which it received approval. The registrant must provide notification, by way of its annual report pursuant to § 586.12, of its intent to continue manufacturing replica vehicles to which an approved registration applies.

§ 586.7 Processing of registrations.

Upon receipt of a registration submitted on vPIC, NHTSA will automatically notify the registrant by email within 90 days of the receipt whether the registration is approved,

denied, or incomplete. This notification will be sent to the email address provided in the manufacturer's original submission. If an application is approved, the registrant's name will automatically be added to the list of approved registrants on NHTSA's website. NHTSA will deny a registration if:

(a) NHTSA determines that the registrant does not meet the requirements of this part 586;

(b) The registration is incomplete, and the registrant has failed to provide the missing information within 60 days after being notified by NHTSA pursuant to 586.8; or,

(c) The registration relies on the same facts and circumstances as a previously denied registration.

§ 586.8 Incomplete registrations.

(a) If NHTSA determines that a submission is incomplete, NHTSA will notify the registrant, by email, within 90 days, that there is missing information. The registrant shall have 60 days to submit the missing information. This notification will be sent to the email address provided in the manufacturer's original submission.

(b) If NHTSA receives the missing information within 60 days of notifying the registrant that its submission is incomplete, NHTSA will approve or deny the registration within a period of time equivalent to the number of days that were remaining in the original 90-day period at the time NHTSA sent the notification, plus an additional 30 days.

(c) If a registrant does not respond to NHTSA's notification that its submission is incomplete within 60 days, or the registrant responds within 60 days but the additional information submitted is not sufficient to complete the registration, the registration may be denied.

§ 586.9 Deemed approved registrations.

(a) If NHTSA does not act on a registration within 90 days of NHTSA's receipt of the submission, NHTSA will notify a registrant by email on or after the 90th day that the registration has been deemed approved. Registrants that have been deemed approved will be included on NHTSA's list of approved replica motor vehicle manufacturers.

(b) A manufacturer that has not received an email notification from NHTSA about NHTSA's decision on the application following 90 days from submission of the registration should contact NHTSA's Manufacturers Helpdesk to determine the status of its registration (Email: *manufacturerinfo@dot.gov;* Telephone: 1–888–399–3277). Manufacturers may also contact the helpdesk for information about the status of their registrations at any time, or may themselves check the status using the key provided them when they submitted their registration application. A manufacturer that has not received an email confirmation from NHTSA that its registration has been deemed approved may be subject to enforcement action by NHTSA for violating 49 U.S.C. 30112(a) if NHTSA finds that the registration was incomplete or denied, and that an email notification had been sent to the email address provided in the manufacturer's submission.

(c) If NHTSA determines that a registration that had been deemed approved is incomplete or fails to meet the requirements for registrants in this part 586, NHTSA may request additional information from the registrant in writing, which includes by email. A manufacturer shall have 60 days to respond to a request for additional information. If the manufacturer fails to respond within the 60 days or submits information that does not support that it meets the requirements of this part 586, NHTSA may revoke the registration.

§ 586.10 Updating existing registrations.

A registered replica manufacturer shall submit updated registration information prior to commencing manufacture of a new model of replica vehicle or reallocating the number of replica vehicles to be made by two or more replica manufacturers under common ownership. The manufacturer shall submit updated registration information pursuant to § 586.6. The manufacturer may not begin producing the new model of replica vehicle or reallocate replica vehicles until its registration is either approved by NHTSA or is deemed approved.

§ 586.11 Temporary label.

Each replica motor vehicle shall have a temporary label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label shall meet the following requirements:

(a) The label shall include a heading area in yellow with an alert symbol consisting of a solid black equilateral triangle with a yellow exclamation point and the word ''WARNING'' in black block capitals in a type size that is larger than that used in the remainder of the label and the alert symbol in black.

(b) The label shall include a message area in white with black text in at least 20-point font stating: ''This vehicle is a replica motor vehicle and is exempt from complying with all current Federal motor vehicle safety standards that apply to motor vehicles, and with theft prevention and bumper standards in effect on the date of manufacture. [The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal''.] See the certification label for a list of the standards from which this replica motor vehicle is exempt.''

(3) The message area shall be not less than 30 cm^2 (4.7 in^2).

§ 586.12 Annual report.

Each manufacturer of a replica motor vehicle shall furnish the following information to *https://vpic.nhtsa.dot.gov/* no later than March 1 following the end of a calendar year in which the manufacturer produced at least one (1) replica motor vehicle:

(a) Full individual, partnership or corporate name of the manufacturer.

(b) Residence address of the manufacturer, phone number and email address.

(c) Year to which the report applies (reporting year).

(d) The complete Vehicle Identification Number (VIN) of each replica vehicle manufactured.

(e) Vehicle make(s) and model(s).

(f) Replica model year.

(g) Original model year of the replicated vehicle(s).

(h) Total number of replica motor vehicles manufactured during the reporting year.

(i) Images of the front, rear, roof, and side views of the original vehicle(s) replicated, of the vehicle's exterior, and images of the same views of a representative replica manufactured to resemble each original vehicle. Submit also information sufficient to establish that the replica motor vehicle, as manufactured, resembles the body of the original vehicle.

(j) State whether the replica vehicles contain any of the following vehicle safety features: Front or side air bags; lap or lap and shoulder belts; advanced safety systems/passive safety systems (listed with locations); electronic stability control; rear visibility camera system; ejection mitigation.

(k) If the registrant will be manufacturing the same replica motor vehicle(s) in the next calendar year, a notification to NHTSA of which replica motor vehicle(s) will be produced, and a certification that the registrant will produce no more than 325 replica motor vehicles in total. If the manufacturer intends to continue manufacturing replica motor vehicle(s), the manufacturer must also submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not

more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration.

§ 586.13 Revocation of registrations.

NHTSA may require registrants to provide information related to compliance with the requirements of this part at any time. NHTSA may revoke an existing registration or deny a registration based on a failure to comply with requirements of this part or a finding of a safety-related defect or unlawful conduct under 49 U.S.C. Chapter 301 *et seq.* that poses a significant safety risk. Prior to the revocation of the registration, NHTSA will provide the registrant a reasonable opportunity to correct deficiencies, if such are correctable, based on the sole discretion of NHTSA.

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS

■ 13. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.95.

■ 14. Amend § 591.5 by revising paragraph (b) to read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicle does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchases for purposes other than resale are not attached), and bumper and theft prevention standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or by the manufacturer to the equipment item or its delivery container, in accordance with, as applicable, parts 541, 555, 567, 568, and 581, or 571 (for certain equipment items) of this chapter, or the vehicle is a replica motor vehicle eligible for an exemption under part 586 and is being imported by a low-volume manufacturer, as defined at 49 CFR 586.4.

* * * * *

Issued under authority delegated in 49 CFR part 1.95 and 49 CFR 501.4.

Steven S. Cliff,

Deputy Administrator.

[FR Doc. 2022–04030 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 87, No. 46
Wednesday, March 9, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0182; Airspace Docket No. 21–AAL–16]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–225; Galena, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–225 in the vicinity of Galena, 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 April 25, 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–2022–0182; Airspace Docket No. 21–AAL–16 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–2022–0182; Airspace Docket No. 21–AAL–16) 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–2022–0182; Airspace Docket No. 21–AAL–16.'' 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 enroute 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 Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute 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. During a recent review of T–225 by the FAA, it was determined that there are two turn points along the route that are not included in the legal description contained in the FAA Order JO 7400.11F. In order to match what is depicted on the charts, the FAA proposes to amend the legal description to include the KUHZE, AK, Fix and the FECFO, AK, Fix between the Galena, AK, (GAL) VHF Omnidirectional Range with Distance Measuring Equipment (VOR/DME) and the Tanana, AK (TAL) VOR/DME.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–225 in the vicinity of Galena, AK in support of a large comprehensive T-route modernization project for the state of Alaska. The proposed amendment is described below.

T–225: The FAA proposes to amend T–225 by including the KUHZE, AK, Fix and the FECFO, AK, Fix between GAL and TAL, due to them being turn points along the route. The rest of the route would remain unchanged.

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–225 Hooper Bay, AK (HPB) to Fairbanks, AK (FAI) [Amended]

Hooper Bay, AK (HPB) VOR/DME
(Lat. 61°30′51.65″ N, long. 166°08′04.13″ W)
Unalakleet, AK (UNK) VOR/DME
(Lat. 63°53′30.99″ N, long. 160°41′03.39″ W)
Galena, AK (GAL) VOR/DME
(Lat. 64°44′17.26″ N, long. 156°46′37.69″ W)
KUHZE, AK Fix
(Lat. 64°49′38.37″ N, long. 156°01′53.87″ W)
FECFO, AK Fix
(Lat. 64°51′10.69″ N, long. 155°43′12.09″ W)
Tanana, AK (TAL) VOR/DME
(Lat. 65°10′37.65″ N, long. 152°10′39.18″ W)
Fairbanks, AK (FAI) VORTAC
(Lat. 64°48′00.25″ N, long. 148°00′43.11″ W)

* * * * *

Issued in Washington, DC, on March 3, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–04911 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0003; Notice No. 209]

RIN 1513–AC79

Proposed Establishment of the Long Valley-Lake County Viticultural Area and Modification of the High Valley and North Coast Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 7,605-acre ''Long Valley-Lake County'' viticultural

area in Lake County, California. Additionally, TTB proposes to expand the boundary of the established 14,000-acre High Valley viticultural area by approximately 1,542 acres in order to create a contiguous border with the proposed Long Valley-Lake County viticultural area. Only the western third of the proposed Long Valley-Lake County viticultural area, and approximately three quarters of the High Valley viticultural area, would lie within the established, multi-county North Coast viticultural area. To avoid this partial overlap with the High Valley and proposed Long Valley-Lake County viticultural areas, TTB is proposing to expand the boundary of the North Coast viticultural area by approximately 23,690 acres. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before May 9, 2022.

ADDRESSES: You may electronically submit comments to TTB on this proposal and view copies of this document, its supporting materials, and any comments TTB receives on the proposal within Docket No. TTB–2022–0003, as posted on *Regulations.gov https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

If the petition proposes the establishment of a new AVA entirely within, or overlapping, an existing AVA, the evidence submitted must include information that identifies the attributes that are consistent with the existing AVA and explain how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition. If a petition seeks to expand the boundaries of an existing AVA, the petition must show how the name of the existing AVA also applies to the expansion area, and must demonstrate that the area covered by the expansion has the same distinguishing features as those of the existing AVA, and different features from those of the area outside the proposed, new boundary.

Petition To Establish the Long Valley-Lake County AVA and To Modify the Boundaries of the High Valley and North Coast AVAs

TTB received a petition from Terry Dereniuk, owner of Terry Dereniuk Consulting, and Don Van Pelt and Clay Shannon, of Cache Creek Vineyards and the Shannon Family of Wines, proposing to establish the ''Long Valley-Lake County'' AVA and to modify the boundaries of the existing High Valley (27 CFR 9.189) and North Coast (27 CFR 9.30) AVAs. The petition was submitted on behalf of Long Valley wine grape growers. The proposed Long Valley-Lake County AVA is located in Lake County, California, and is partially within the existing North Coast AVA. The proposed AVA is also to the north and east of the established High Valley AVA. The approximately 7,605-acre proposed AVA currently contains 3 wineries and 5 commercial vineyards, which cover a total of approximately 149 acres.

The western third of the proposed Long Valley-Lake County AVA, and approximately three quarters of the High Valley AVA, would lie within the existing North Coast AVA. To address the partial overlap and account for

viticultural similarities, the petition also proposes to expand the boundary of the North Coast AVA so that the entire High Valley and proposed Long Valley-Lake County AVAs would be included within the North Coast AVA. The proposed expansion would increase the size of the North Coast AVA by 23,690 acres. Currently, there are five vineyards within the proposed North Coast AVA expansion area. The petition included three letters of support for the proposed expansion.

Furthermore, the petition proposes to expand the boundary of the established High Valley AVA. The proposed Long Valley-Lake County AVA lies to the north and east of the established AVA and shares a small part of its boundary. However, there is a small gap between the northern boundary of the High Valley AVA and the southern boundary of the proposed Long Valley-Lake County AVA. The petition proposes to expand the High Valley AVA northward, eliminating the gap and making the northern boundary of the High Valley AVA contiguous with the southern boundary of the proposed AVA. The proposed boundary modification would increase the size of the 14,000-acre High Valley AVA by approximately 1,542 acres. The petition included a letter from a member of the committee that originally proposed the establishment of the High Valley AVA. The letter supports the proposed High Valley AVA expansion as a way to avoid ''the creation of an area that will be part of neither'' the High Valley AVA nor the proposed Long Valley-Lake County AVA. The expansion would affect one grower, dividing the grower's acreage between the High Valley AVA and the proposed Long Valley-Lake County AVA. The petition included a letter from the grower, supporting the expansion and acknowledging its effect. Currently, there are no other vineyards within the proposed expansion area.

The distinguishing features of the proposed Long Valley-Lake County AVA include its topography and elevation, geology, and climate. Unless otherwise noted, all information and data contained in the following sections are from the petition to establish the proposed AVA and its supporting exhibits.

Proposed Long Valley-Lake County AVA

Name Evidence

According to the petition, settlers began arriving in the region of the proposed Long Valley-Lake County AVA in the mid-1800s. An entry in the book *History of Napa and Lake Counties* shows that by the time the book was published in 1881, the region was already known as ''Long Valley.'' [1] The entry is a listing of the distances from Lakeport, California, to various other locations in Lake County, including a notation that ''Long Valley'' is 30 miles from Lakeport. Another description of Lake County published by the Lake County Board of Supervisors in 1888 notes that, ''Long Valley lies on the east side of Clear Lake, and is separated from it by a high range of mountains.'' [2]

The petition also included more recent evidence that the region of the proposed AVA is referred to as ''Long Valley.'' For example, a 1955 report on the ground water of Lake County includes a 4-page entry for ''Long Valley'' and notes that the valley is ''about 5 miles north of Clearlake Oaks.'' [3] Long Valley is also identified on the 1996 USGS Clearlake Oaks quadrangle map used to form part of the proposed boundary. Two roads running through the proposed AVA are named New Long Valley Road and Old Long Valley Road, and a creek that runs along the valley floor is called Long Valley Creek. The roads and creek are shown on a 2015 AAA Road map included in the petition as Appendix Exhibit 6. In Ground Water Bulletin 118, the California Department of Water Resources designates the groundwater basin beneath the region of the proposed AVA as ''Long Valley Groundwater Basin.'' [4] The Shoreline Communities Area Plan prepared by the Lake County Development Department in 2009 notes, ''The primary areas within the planning area designated as agriculture include High Valley, Long Valley, and properties with active Williamson Act (Agricultural Preserve) contracts.'' [5] Finally, a 2012 article about a wildfire in the Lake County states that the fire ''had people in the nearby Spring Valley and Long Valley communities under evacuation orders.'' [6]

[1] *History of Napa and Lake Counties, California* (Slocum, Bowen, & Co., Publishers 1881) page 89. *See also* Figure 1 of the petition in Docket TTB–2022–0003 at *https://www.regulations.gov*.

[2] James Hilly, Upper Lake, *A Description of Lake County California,* published by authority of the Board of Supervisors, 1888, page 8.

[3] Upson, J.E., and Fred Kinkel. *Ground Water of the Lower Lake-Middletown Area Lake County, California*. Geological Survey Water-Supply Paper 1297. Washington: U.S. Government Printing Office, 1955.

[4] California Department of Water Resources. *California's Ground Water Bulletin 118*. California Department of Water Resources: 1975. Updated 2004.

[5] The Shoreline Communities Area Plan prepared by Lake County Community Development Department, page 1–3.

[6] *https://www.nbcbayarea.com/news/local/Wye-Fire-in-Lake-County-Burns-Out-of-Control-165934666.html. See also* Appendix Exhibit 8 of the petition in Docket TTB–2022–0003 at *https://www.regulations.gov*.

Boundary Evidence

The proposed Long Valley-Lake County AVA includes Long Valley, a long, narrow valley oriented along a northwest-southeast axis. The proposed AVA contains the valley floor as well as the surrounding hillsides and bench lands that rise from 200 to 500 feet above the valley floor. The proposed northern boundary primarily follows the 1,400-foot elevation contour. The proposed AVA is bounded on the north by the Mendocino National Forest, which was excluded from the proposed AVA because it is not available for commercial viticulture. The proposed eastern boundary also primarily follows the 1,400-elevation contour and separates the proposed AVA from steep, mountainous terrain. The proposed AVA is bounded on the southwest by State Highway 20, which separates the proposed AVA from higher elevations and hillier terrain that lacks open valley floor, and on the southeast by the 1,200-foot elevation contour. The proposed western boundary follows the 1,600-foot elevation contour, which also separates the proposed AVA from the established High Valley AVA.

Distinguishing Features

According to the petition, the distinguishing features of the proposed Long Valley-Lake County AVA include its topography and elevation, geology, and climate.

Topography and Elevation

According to the petition, elevations and slope angles within the proposed Long Valley-Lake County AVA vary due to its topography of rolling foothills, benches, and valley floor. The median elevation of the valley floor is approximately 1,322 feet above sea level, while the lowest valley floor elevations are at the southern end of the proposed AVA and reach approximately 1,063 feet above sea level. The foothills included in the proposed AVA rise an additional 200 to 500 feet above the valley floor. The valley floor and benches are generally flat with slopes from 0 to 10 percent. The hillsides are steeper, with slope angles in some areas reaching more than 30 percent.

The petition states that the topography of the proposed AVA, with its long, narrow valley floor between surrounding mountains, provides a beneficial environment for viticulture. Air drainage provides protection from damaging late spring frosts in vineyards along the benches, which are higher

than the valley floor. The petition notes that Noggle Vineyard and Winery, which is located on a bench on the west side of the proposed AVA, does not use mechanical frost protection methods and instead relies on the cold air drainage to protect its vines. Vineyards on the lower valley floor within the proposed AVA are at a higher risk for damaging frosts due to their flat slope angles and lower elevations. As a result, valley floor vineyards like the Shannon Ridge vineyards use frost protection methods such as overhead sprinklers. However, during the growing season, vineyards on the valley floor benefit from winds that blow through the valley and cool the vines from the heat of the day.

To the west and southwest of the proposed AVA, the established High Valley AVA has higher elevations than the proposed Long Valley-Lake County AVA. Elevations in the valley floor of the High Valley AVA are between 1,700 and 1,800 feet, and elevations on the surrounding ridges are as high as 3,000 feet. To the east and south of the proposed AVA are steep hillsides with slope angles exceeding 30 percent and elevations that rise to 2,000 feet at the highest peaks.

Geology

According to the petition, geology is a significant distinguishing feature of the proposed Long Valley-Lake County AVA. The proposed AVA sits on what is known as the Cache Formation, which is estimated to be 1.6 to 2.8 million years old and from the Pliocene and early Pleistocene period. The formation is largely made up of lake deposits and consists of tuffaceous and diatomaceous sands and silts, limestone, gravel, and intercalated volcanic rocks. The Cache Formation is the foundation for the soils of the proposed AVA and the nutrients found therein, meaning that the roots of vines grown in the Cache Formation will come into contact with a different set of minerals and nutrients than vines grown elsewhere.

To the north and west of the proposed Long Valley-Lake County AVA, the primary geologic formation is the Franciscan Formation. This formation is comprised of Cretaceous and Jurassic sandstone with similar amounts of shale, chert, limestone, and conglomerate rocks from the Mesozoic period. To the east and south of the proposed AVA is the Great Valley Sequence. Holocene volcanic flow rocks and minor pyroclastic deposits, as well as the Franciscan Formation and ultramafic rocks, also occur to the south and east of the proposed AVA.

Climate

The petition provided information about the climate of the proposed Long Valley-Lake County AVA, including annual rainfall amounts and growing degree day (GDD) accumulations.[7] First, the petition notes that based on data from a California groundwater bulletin, annual rainfall amounts within the proposed AVA generally range between 27 and 33 inches, increasing to the west.[8] The bulletin states that to the southeast of the proposed Long Valley-Lake County AVA, within the Clear Lake Cache Formation Groundwater Basin, annual precipitation amounts range from 25 to 29 inches. South of the proposed AVA, within the Burns Valley Basin, annual precipitation is approximately 27 inches. West and southwest of the proposed AVA, in the High Valley Groundwater Basin, annual precipitation ranges from 27 to 35 inches, decreasing to the east; however, the petition notes that annual precipitation amounts within the High Valley AVA, which is located within the High Valley Groundwater Basin, can reach up to 54 inches. To the northwest of the proposed AVA is the Middle Creek Groundwater Basin, and the California groundwater bulletin indicates that annual precipitation amounts in that region range from 43 to 45 inches, increasing to the north. Rainfall data was not provided for the regions to the north and east of the proposed AVA.

The petition also includes measurements for rainfall amounts from three specific vineyard locations within the proposed AVA. Noggle Vineyards is located on a bench west of the southern end of the Long Valley floor. Garner Ranch is located in the western portion of the valley floor, which typically receives higher rainfall amounts than the eastern portion of the valley. Garner Ranch is also located at elevations lower than Noggle Vineyards and higher than Spring Valley. The Spring Valley location is located on the southeastern side of the valley floor, at elevations lower than both of the other two locations.

[7] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

[8] *California Groundwater Bulletin 118,* Sacramento Valley Groundwater Basin, Long Valley Groundwater Basin 5–31, February 27, 2004.

[9] The rainfall amounts were collected from July of the first year to June of the following year.

TABLE 1—ANNUAL PRECIPITATION AMOUNTS AT NOGGLE VINEYARDS [9]

Year	Inches
2016–2017	41.4
2015–2016	29.85
2014–2015	28
2013–2014	16.8
2012–2013	20.5
2011–2012	18.81
2010–2011	38.45
2009–2010	30.9
2008–2009	20.1
2007–2008	22.5
2006–2007	16.2
2005–2006	50.4
2004–2005	38.75
2003–2004	30.08
2002–2003	14.65
Median Annual Rainfall	28

TABLE 2—ANNUAL PRECIPITATION AMOUNTS AT GARNER RANCH [10]

Year	Inches
2015–2016	51.98
2014–2015	44.06
2013–2014	8.83
2012–2013	40.32
2011–2012	12.24
2010–2011	43.82
2009–2010	35.19
2008–2009	45.57
2007–2008	30.44
2006–2007	34.65
2005–2006	36.45
2004–2005	47.76
2003–2004	48.95
2002–2003	44.01
2001–2002	45.53
Median Annual Rainfall	43.82

TABLE 3—ANNUAL PRECIPITATION AMOUNTS IN SPRING VALLEY [11]

Year	Inches
2017	43.15
2016	29.6
2015	26
2014	15.5
2013	22.5
2012	20.7
2011	40
2010	30
2009	22
2008	22
Median Annual Rainfall	24.25

According to the petition, annual rainfall plays a critical role in ensuring recharge of the underlying groundwater and providing water for irrigation.

[10] The rainfall amounts were collected from July of the first year to June of the following year.

[11] The rainfall amounts were collected from January to December.

Based on a recent study of wine grape production in Lake County,[12] wine grapes require an average of 8 to 11 acre inches per year for irrigation purposes. The water is also used for frost protection in the lower, flatter portions of the proposed AVA.

The petition also included information on annual growing degree day (GDD) accumulations within the proposed AVA. The petition included GDD information from three locations within the proposed AVA. However, because one of the locations only had data from two years and the second only had data from a single year, TTB is not including those locations in the following table.

TABLE 4—GDD ACCUMULATIONS FROM NOGGLE VINEYARDS

Year	GDDs
2016	3,377
2015	3,596
2014	3,668
2013	3,355
2012	3,305
2011	2,955
2010	2,882
2009	3,416
2008	3,432
2007	3,126
2006	3,355
2005	3,112
2004	3,430
2003	4,277
Average	3,378

Based on the data in the table, the proposed Long Valley-Lake County AVA is classified as Region III on the Winkler scale.[13] According to the petition, a location's classification on the Winkler scale can predict the site's suitability for growing specific grape varieties.[14] The petition states that Region III is favorable for high production of standard to good quality table wines.[15] The proposed AVA is known for producing red wine grapes such as Cabernet Sauvignon, Cabernet Franc, Petite Sirah, and Syrah.

By contrast, the established High Valley AVA, which is located to the immediate south and west of the proposed AVA, has annual GDD accumulations that range from a low of 3,139 to a high of 3,775, with an average of 3,447. Farther south, in the established Red Hills Lake County AVA (27 CFR 9.169), annual GDD accumulations range from 3,155 to 3,753, with a median of 3,595. These GDD accumulations suggest a warmer climate to the south and west of the proposed AVA and place the High Valley AVA in the higher end of Region III and the Red Hills Lake County AVA in the lower end of Region IV. However, farther to the west and southwest of the proposed AVA, in the established Benmore Valley (27 CFR 9.138), Big Valley District-Lake County (27 CFR 9.232), and Kelsey Bench-Lake County (27 CFR 9.233) AVAs, median GDD accumulations are lower, at 3,248, 3,245, and 3,250, respectively. To the southeast of the proposed AVA, the Capay Valley (27 CFR 9.176) and Guenoc Valley (27 CFR 9.26) AVAs have annual GDD accumulations ranging from 2,963–4,318 and 3,420–3,796, respectively, which suggests that this region has a warmer climate than the proposed AVA. The petition did not provide annual GDD accumulation averages for regions to the due north or due east of the proposed AVA.

Summary of Distinguishing Features

The following table summarizes the characteristics of the proposed Long Valley–Lake County AVA and compares them to the features of the surrounding regions.

TABLE 5—SUMMARY OF DISTINGUISHING FEATURES

Region	Features
Proposed AVA	Valley floor, rolling hills, and benches; median elevation of 1,322 feet; valley floor and bench slope angles from 0 to 10 percent with steeper hillsides; primary geologic feature is Cache Formation comprised of tuffaceous and diatomaceous sands and silts, limestone, gravel, and intercalated volcanic rock; annual rainfall amounts from 27 to 33 inches within the Long Valley Groundwater Basin; average GDD accumulations of 3,378; Winkler scale Region III.
North	Primary geologic feature is Franciscan Formation of sandstone, shale, chert, limestone, and conglomerate rocks; annual rainfall amounts in the Middle Creek Groundwater Basin (northwest of proposed AVA) range from 43 to 45 inches.
East	Steep hillsides with slope angles exceeding 30 percent; primary geologic feature is Great Valley Sequence with Holocene volcanic flow rocks and minor pyroclastic deposits; annual rainfall amounts within Clear Lake Cache Formation Groundwater Basin (southeast of proposed AVA) range from 25 to 29 inches.
South	Primary geologic feature is Great Valley Sequence with Holocene volcanic flow rocks and minor pyroclastic deposits; annual rainfall amount in the Burns Valley Basin is 27 inches; higher GDD accumulations.
West	Higher elevations up to 3,000 feet; annual rainfall amounts in High Valley Groundwater Basin ranges from 27 to 35 inches; higher GDD accumulations.

Comparison of the Proposed Long Valley-Lake County AVA to the Existing North Coast AVA

The North Coast AVA was established by T.D. ATF–145, which was published in the **Federal Register** on September 21, 1983 (48 FR 42973). T.D. ATF–145 describes the topography of the North Coast AVA as ''flat valleys and tillable hillsides surrounded by mountains.'' The North Coast AVA is generally characterized as having climatic Regions I through III on the Winkler scale. The average annual rainfall amount in the North Coast AVA is 36.2 inches.

The proposed Long Valley-Lake County AVA is partially located within the North Coast AVA and shares some of the characteristics of the larger established AVA. For example, similar

[12] McGourty, Glenn, et al. *Vineyard Water Use in Lake County,* California. December 1, 2014. Accessed from *https://www.lakecountywinegrape.org/wp-content/uploads/2014/08/Lake-County-Vineyard-Water-Use-UC-Cooperative-Extension-December-1-2014.pdf.*

[13] The Winkler scale GDD regions are as follows: Region Ia, 1,500–2,000; Region Ib, 2,000–2,500; Region II, 2,500–3,000; Region III, 3,000–3,500; Region IV, 3,500–4,000: Region V, 4,000–4,900.

[14] Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64.

[15] Gregory V. Jones, Ph.D., *Climate Characteristics for Winegrape Production in Lake County California,* report for Lake County Winegrape Commission, *www.lakecountywinegrape.org.*

to other locations in the North Coast AVA, Long Valley is a northwest-southeast oriented valley surrounded by tillable foothills or hillsides suitable for planting wine grapes and steeper mountains. The proposed AVA is also classified as Region III on the Winkler scale, which is within the range of classifications found in the North Coast AVA. The western portion of the proposed Long Valley-Lake County AVA, which is entirely located within the North Coast AVA, has average annual precipitation amounts that are similar to those of the North Coast AVA. However, due to lower average annual rainfall amounts in its eastern portion, the smaller proposed Long Valley-Lake County as a whole has lower average rainfall amounts than the large, multi-county North Coast AVA.

Proposed Modification of the North Coast AVA

As previously noted, the petition to establish the proposed Long Valley-Lake County AVA also requested an expansion of the established North Coast AVA. The proposed Long Valley-Lake County AVA is located along the eastern boundary of the North Coast AVA. The western third of the proposed AVA would, if established, be located within the current boundary of the North Coast AVA. However, unless the boundary of the North Coast AVA is modified, the remaining two-thirds of the proposed AVA would be outside the North Coast AVA. Additionally, the established High Valley AVA currently partially overlaps the North Coast AVA. If approved, the proposed North Coast AVA expansion would place both the High Valley AVA and the adjacent proposed Long Valley-Lake County AVA entirely within the North Coast AVA.

Currently, the North Coast AVA boundary in the vicinity of the proposed Long Valley-Lake County AVA and the proposed expansion area follows a straight line drawn from the southern boundary of the Mendocino National Forest to the summit of Round Mountain, which is within the established High Valley AVA. The boundary then follows a straight line from Round Mountain to the summit of Bally Peak and then to the summit of Brushy Sky High Mountain. The proposed boundary modification would move the North Coast AVA boundary east. The proposed boundary modification would begin at the point where the current boundary intersects the summit of Evans Peak. From there, the proposed boundary would proceed southeasterly in a straight line to the summit of Chalk Mountain, and then continue in a straight line southeasterly to the summit of Red Rocks. Finally, the boundary would proceed southeasterly to the summit of Brushy Sky High Mountain, where it would rejoin the current boundary. The proposed boundary modification would add 23,690 acres to the North Coast AVA.

The expansion petition notes that at the time the North Coast AVA was established, the High Valley AVA did not exist and there was limited viticultural activity in the region. Now, several vineyards and wineries exist within the proposed expansion area. The petition included letters of support for the proposed North Coast AVA expansion from a Lake County attorney and wine grape grower, the University of California Cooperative Extension Winegrape and Plant Science Advisor, and the president of the Lake County Winegrape Commission.

The petition included evidence that, although only a portion of Lake County was originally included in the North Coast AVA, the name ''North Coast'' applies to the region of the county that is within the proposed expansion area, as well. For example, the Wine Institute's web page states, ''The western portion of Lake County comprises the North Coast AVA. It encompasses the Clear Lake AVA, * * * the Red Hills Lake County AVA, and High Valley AVA.'' [16] The petition notes that the Wine Institute's web page does not distinguish between the western portion of the High Valley AVA and the eastern portion, which is not within the North Coast AVA, suggesting that the proposed expansion area is associated with the North Coast AVA even though it is not technically part of it. The petition also states that an online directory of Californian camping locations mentions that the ''southern portion of the North Coast is largely urbanized and it includes Sonoma, Napa and Lake Counties.'' [17] As the petition notes, the website includes all of Lake County within the region known as the ''North Coast'' and does not distinguish between the western and eastern portions of the county.

The expansion petition claims that the proposed North Coast AVA expansion area has features that are similar to those described as distinguishing features of the North Coast AVA in T.D. ATF–145, namely cooling winds, growing degree days, and rainfall. First, the expansion petition describes the wind patterns within the proposed expansion area and the North Coast AVA. T.D. ATF–145 notes, ''While confirming that Lake County does not receive coastal fog, evidence was presented that coastal air flows through gaps in the mountains and across Clear Lake, cooling the area surrounding the Lake * * *.'' The expansion petition notes that two of these gaps are northwest of the High Valley AVA, the proposed Long Valley-Lake County AVA, and the proposed expansion area and likely influence air flow from the west. The gaps are illustrated in two maps included in the expansion petition as Figures 31 and 32.

The petition also included a wind map of the northern coastal regions of California (Figure 33) which shows winds moving eastward into the proposed expansion area before turning to the north. Although the wind map only shows the wind pattern for a single day in 2018, it does suggest that marine winds can reach the proposed North Coast AVA expansion area. The petition also included an article about a 2018 wildfire in the Spring Valley region of the proposed expansion area that provides anecdotal evidence of marine air reaching the proposed expansion area. The article states, ''While the Sunday winds wreaked havoc on firefighting efforts, they also helped pull in a heavy marine layer overnight that brought a welcomed spike in humidity. Much of Sonoma County was bathed in fog Monday morning and that same coastal influence helped keep moisture levels up—and temperatures down—at the fire.'' [18]

Next, the expansion petition compared the GDDs of the proposed North Coast AVA expansion area to those of the established North Coast AVA. T.D. ATF–145 concludes that the North Coast AVA is ''generally characterized as having climatic Regions I through III on the Winkler scale,'' and cites assertions from grape growers in Lake County that the portions of Lake County currently within the North Coast AVA have Region II and Region III climates. As noted previously, GDD accumulations for Noggle Vineyard, which is within the proposed Long Valley-Lake County AVA and the proposed North Coast AVA expansion area, place it in Region III. The expansion petition also included a map (Figure 36) showing average GDD accumulations for Lake County based on

[16] *https://www.wineinstitute.org/resources/consumerfeaturedstories/article338.*

[17] *https://www.camp-california.com/rv-camping-destination/north-coast.*

[18] Randi Rossman, Martin Espinoza and Kevin McCallum. ''Pawnee fire in Lake County jumps to 11,500 acres.'' The Santa Rosa Press Democrat, June 25, 2018. *https://www.pressdemocrat.com/news/8468876-181/pawnee-fire-in-lake-county.* See also Appendix Exhibit 18 to the petition in Docket TTB–2022–0003 at *https://www.regulations.gov.*

temperature data from 1971 to 2000. The map shows that both the proposed Long Valley-Lake County AVA and the portion of the High Valley AVA that is within the proposed North Coast AVA expansion area have GDD accumulations similar to the portion of the High Valley AVA that is currently within the North Coast AVA. Additionally, the proposed expansion area's GDD accumulations are similar to those of the established Red Hills Lake County AVA, which is entirely within the North Coast AVA.

Finally, the proposed North Coast AVA expansion petition compares annual rainfall amounts within the proposed expansion area to those in the established North Coast AVA. T.D. ATF–145 concluded that rainfall within the North Coast AVA ''varies widely from 24.8 inches at Napa State Hospital to 62.2 inches in Middletown.'' T.D. ATF–145 cited evidence that the western portion of Lake County currently within the North Coast AVA receives an average of 38.9 inches of rainfall annually at 5 weather stations, ranging from 28.9 inches at one station to 62.2 inches at another, and that Mendocino and Sonoma Counties, which are also within the North Coast AVA, receive an average of 39.7 and 34.7 inches of rain, respectively.

As previously discussed, the North Coast AVA expansion petition provided rainfall data from two locations within the southern half of the proposed Long Valley-Lake County AVA that are also within the proposed North Coast AVA expansion area. The average annual rainfall amounts at Noggle Vineyards and Spring Valley were 27.8 and 27.1 inches, respectively, which is lower than the average annual rainfall amounts for Mendocino County, Sonoma County and western Lake County, as described in T.D. ATF–145. However, the expansion petition also provided more recent rainfall averages from seven Lake County weather stations that are currently within the North Coast AVA (Figure 43).[19] The data was gathered from 2012 to 2017. Rainfall averages from those locations ranged from a low of 23.68 at Kelseyville to 44.6 inches at Middletown. The petition states that, based in part on these rainfall amounts, the proposed expansion area's annual rainfall amounts are comparable to other Lake County locations that are currently within the North Coast AVA.

[19] All figures and exhibits to the petition can be viewed in Docket TTB–2022–0003 at *https://www.regulations.gov.*

Proposed Modification of the High Valley AVA

As previously noted, the petition to establish the proposed Long Valley-Lake County AVA also requested an expansion of the established High Valley AVA. The High Valley AVA was established by T.D. TTB–30 on July 1, 2005 (70 FR 37998). The High Valley AVA is located to the west and southwest of the proposed AVA and shares a very small portion of its eastern boundary with the southeastern portion of the proposed AVA. Between the northern boundary of the High Valley AVA and the southwestern boundary of the proposed AVA is a small strip of land. In order to eliminate this ''no man's land'' between the established and proposed AVAs, the petition proposed moving the northern boundary of the High Valley AVA northward so that it is concurrent with the southwestern boundary of the proposed Long Valley-Lake County AVA. The proposal would increase the size of the High Valley AVA by 1,542 acres. The petition claims that the region between the established AVA and the proposed Long Valley-Lake County AVA has characteristics that are similar to those of the established High Valley AVA, namely soils and topography.

T.D. TTB–30 states that the primary soils of the High Valley AVA include Maymen, Hopland, and Mayacama series soils, which are primarily gravelly loams and gravelly sandy clay loams. Also present within the High Valley AVA are soils of the Konocti, Hambright, Benridge, and Sodabay series. The petition to establish the High Valley AVA states that the mineral serpentine is not found within the High Valley AVA. The petition to expand the High Valley AVA notes that many of the same soils are also found within the proposed expansion area, including Benridge-Konocti association, Benridge-Sodabay loams, Maymen-Etsel-Snook complex, Maymen-Hopland-Etsel association, and Maymen-Hopland-Mayacama soils. Furthermore, serpentine is not found within the proposed expansion area. The High Valley AVA expansion petition included a map (Exhibit 10) showing the soil units of the proposed expansion area and the High Valley AVA to support these claims. The expansion petition also notes that the Cache Formation, which is the geologic parent feature of the soils within the neighboring proposed Long Valley-Lake County AVA, is not present within the proposed High Valley AVA expansion area, nor is it present within the High Valley AVA. TTB notes that, although the petition did not characterize soils as a distinguishing feature of the proposed Long Valley-Lake County AVA, the soils in the proposed High Valley AVA expansion area are more similar to those of the High Valley AVA than to the soils of the neighboring proposed Long Valley-Lake County AVA.[20]

The proposed High Valley AVA expansion petition also states that the topography of the proposed expansion area is similar to that of the High Valley AVA. T.D. TTB–30 describes the High Valley AVA as having elevations of 1,700 to 1,800 feet along its valley floor and ridges that rise steeply above the valley floor. The elevations of these ridge tops along the southern face of High Valley Ridge range from 1,800 to 3,400 feet. The proposed expansion area contains the northern flanks of the High Valley Ridge. Elevations in the proposed expansion area range from a low of 1,720 feet along the adjacent boundary of the proposed Long Valley-Lake County AVA to over 2,000 feet where the proposed expansion area joins the High Valley AVA boundary along High Valley Ridge. Therefore, the elevations within the proposed expansion area are within the range of elevations found within the High Valley AVA.

Currently, the High Valley AVA boundary in the vicinity of the proposed expansion area follows the 2,000-foot elevation contour along the ridgeline of High Valley Ridge. It also follows a straight line drawn between the 2,000-foot elevation contour and the boundary of the Mendocino National Forest. The proposed boundary modification would move this portion of the High Valley AVA boundary north to the 1,720-foot elevation contour so that the northeastern boundary of the AVA would be concurrent with the southwestern boundary of the proposed Long Valley-Lake County AVA.

TTB Determination

TTB concludes that the petition to establish the 7,605-acre ''Long Valley-Lake County'' AVA and to concurrently modify the boundaries of the existing High Valley and North Coast AVAs merits consideration and public comment, as invited in this document.

TTB is proposing the establishment of the new AVA and the modification of the existing AVAs as one action. Accordingly, if TTB establishes the proposed Long Valley-Lake County AVA, then the proposed boundary modifications of the High Valley and

[20] The petition mentioned the following soils within the proposed Long Valley-Lake County AVA: Lupoyoma silt loam, Wolf Creek gravelly loam, Maywood variant sandy loam, Manzanita gravelly loam, and Phipps Complex soil.

North Coast AVAs would be approved concurrently. If TTB does not establish the proposed AVA, then the High Valley and North Coast AVA boundaries would not be modified.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA and the boundary modifications of the two established AVAs in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Long Valley-Lake County AVA boundary and the proposed boundary modifications of the North Coast and High Valley AVAs on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Long Valley-Lake County,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Long Valley-Lake County'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. TTB is not proposing to designate ''Long Valley,'' standing alone, as a term of viticultural significance because the term ''Long Valley'' is used to refer to multiple areas in the United States. Therefore, wine bottlers using ''Long Valley,'' standing alone, in a brand name or in another label reference on their wines would not be affected by the establishment of this proposed AVA.

If approved, the establishment of the proposed Long Valley-Lake County AVA and the concurrent expansions of the North Coast AVA and the High Valley AVA would allow vintners to use the following terms as AVA appellations of origin if the wines meet the eligibility requirements for the appellation:

(1) ''Long Valley-Lake County'' and ''North Coast'' for wine made from grapes grown within the proposed Long Valley-Lake County AVA;

(2) ''High Valley'' and ''North Coast'' for wine made from grapes grown within the High Valley AVA and the proposed High Valley AVA expansion area; and

(3) ''North Coast'' for wine made from grapes grown in the North Coast AVA and the proposed North Coast AVA expansion area.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed Long Valley-Lake County AVA and concurrently modify the boundaries of the established High Valley and North Coast AVAs. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, and other required information submitted in support of the Long Valley-Lake County AVA petition. In addition, given the proposed AVA's location within the existing North Coast AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the North Coast AVA that the proposed Long Valley-Lake County AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

TTB also invites comments on the proposed expansion of the existing North Coast and High Valley AVAs. TTB is interested in comments on whether the evidence provided in the petition sufficiently demonstrates that the proposed North Coast AVA expansion area is similar enough to the North Coast AVA to be included in the established AVA. Additionally, TTB is interested in comments on whether the evidence provided in the petition sufficiently demonstrates that the proposed High Valley AVA expansion area is similar enough to the High Valley AVA to be included in the established AVA. Comments should address the boundaries, topography, soils, and any other pertinent information that supports or opposes the proposed North Coast AVA and High Valley AVA boundary expansions.

Because of the potential impact of the establishment of the proposed Long Valley-Lake County AVA on wine labels that include the term ''Long Valley-Lake County'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2022–0003 on ''*Regulations.gov,*'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 209 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* visit the site and click on the ''Help'' tab at the top of the page.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 209 and include your name and mailing address. Your comments also must be made in

English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov,* please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2022–0003 on the Federal e-rulemaking portal, *Regulations.gov,* at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 209. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For more information about *Regulations.gov* and how to comment, click on the ''FAQ'' tab at the bottom of the site's homepage.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may also obtain copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division by email using the web form at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–1039, ext. 175, to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.30 by revising paragraphs (c)(18) through (20) to read as follows:

§ 9.30 North Coast.

* * * * *

(c) * * *

(18) Then north-northwest in a straight line for approximately 7.6 miles to the 1,851-foot summit of Red Rocks;

(19) Then northwest in a straight line for approximately 4.3 miles to the 1,696-foot summit of Chalk Mountain;

(20) Then northwest in a straight line for approximately 6 miles to the 4,005-foot summit of Evans Peak;

* * * * *

■ 3. Amend § 9.189 by:

■ a. Revising paragraphs (c)(3) through (5);

■ b. Removing paragraph (c)(6); and

■ c. Redesignating paragraphs (c)(7) through (11) as paragraphs (c)(6) through (c)(10).

The revisions read as follows:

§ 9.189 High Valley.

* * * * *

(c) * * *

(3) Proceed north along the western boundary of section 12 (also the eastern boundary of the Mendocino National Forest), T14N/R8W, to its intersection with the 1,720-foot elevation contour; then

(4) Proceed easterly along the meandering 1,720-foot elevation contour for approximately 11.3 miles, crossing onto the Benmore Canyon map, to the intersection of the elevation contour with the northern fork of an unnamed creek in Salt Canyon known locally as Salt Creek in section 23, T14N/R7W; then

(5) Proceed easterly (downstream) along Salt Creek approximately 760 feet to its intersection with the 1,600-foot elevation contour in section 23; then

* * * * *

■ 4. Add § 9.____ to read as follows:

§ 9.____ Long Valley-Lake County.

(a) *Name.* The name of the viticultural area described in this section is ''Long Valley-Lake County''. For purposes of part 4 of this chapter, ''Long Valley-Lake County'' is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Long Valley-Lake County viticultural area are titled:

(1) Clearlake Oaks, California, 1996;

(2) Benmore Canyon, California, 1996; and

(3) Lower Lake, California, 1993.

(c) *Boundary.* The Long Valley-Lake County viticultural area is located in Lake County, California. The boundary of the Long Valley-Lake County viticultural area is as described as follows:

(1) The beginning point is on the Benmore Canyon map at the intersection of State Highway 20 and the 1,600-foot elevation contour, just north of Sweet Hollow Creek, in section 35, T14N/R7W.

(2) From the beginning point, proceed northerly along the meandering 1,600-

foot elevation contour for approximately 4.1 miles to its intersection with the northern fork of an unnamed creek in Salt Canyon known locally as Salt Creek in section 23, T14N/R7W; then

(3) Proceed westerly (upstream) along Salt Creek approximately 760 feet to its intersection with the 1,720-foot elevation contour in section 23, T14N/R7W; then

(4) Proceed northeasterly, then westerly along the meandering 1,720-foot elevation contour for approximately 11.3 miles, crossing onto the Clearlake Oaks map, to the intersection of the elevation contour with the Mendocino National Forest boundary along the western boundary of section 12, T15N/R8W; then

(5) Proceed north along the Mendocino National Forest boundary approximately 896 feet to its intersection with the unnamed creek in Sulphur Canyon; then

(6) Proceed northeast (downstream) along the unnamed creek approximately 770 feet to its intersection with the 1,400-foot elevation contour in section 12, T14N/R8W; then

(7) Proceed northeasterly, then northwesterly along the meandering 1,400-foot elevation contour to its intersection with the Mendocino National Forest boundary along the western boundary of section 36, T15N/R8W; then

(8) Proceed north along the western boundary of section 36 to its intersection with the northern boundary of section 36; then

(9) Proceed east along the northern boundary of section 36 to its intersection with the 1,400-foot elevation contour; then

(10) Proceed southeasterly along the 1,400-foot elevation contour, crossing onto the Benmore Canyon map and continuing easterly along the 1,400-foot elevation contour to its intersection with the southern boundary of section 11, T14N/R7W; then

(11) Proceed north in a straight line to the northern boundary of section 11; then

(12) Proceed east along the northern boundary of section 11, crossing Wolf Creek, to the intersection of the section boundary with the 1,320-foot elevation contour; then

(13) Proceed south in a straight line to the 1,400-foot elevation contour in section 11; then

(14) Proceed southeasterly along the 1,400-foot elevation contour to the western boundary of section 12, T14N/R7W; then

(15) Proceed southeast in a straight line, crossing the North Fork of Cache Creek, to the 1,400-foot elevation contour in section 12 west of the summit of Chalk Mountain; then

(16) Proceed southeasterly, then southerly along the meandering 1,400-foot elevation contour to its third intersection with the eastern boundary of section 13; then

(17) Proceed west in a straight line to an unnamed, unimproved 4-wheel drive road in section 13; then

(18) Proceed south in a straight line, crossing over a second unnamed, unimproved 4-wheel drive road in section 13, to the 1,240-foot elevation contour in section 24, T14N/R7W; then

(19) Proceed east in a straight line to the 1,400-foot elevation contour in section 24; then

(20) Proceed southeasterly, then northeasterly along the meandering 1,400-foot elevation contour to its intersection with an unnamed creek in section 19, T14N/R6W; then

(21) Proceed southwesterly (downstream) along the unnamed creek to its intersection with the 1,200-foot contour in section 19; then

(22) Proceed south in a straight line to the northern boundary of section 30, T14N/R6W; then

(23) Proceed southeast, then east along the northern boundary of section 30 to its intersection with the 1,400-foot elevation contour; then

(24) Proceed south in a straight line to the unnamed creek in Benmore Canyon in section 30; then

(25) Proceed southeast in a straight line to the 1,400-foot elevation contour in section 30; then

(26) Proceed southeasterly along the 1,400-foot elevation contour to its intersection with the eastern boundary of section 31, T14N/R6W; then

(27) Proceed generally south along the eastern boundary of section 31 and continuing along the eastern boundary of section 6, T13N/R6W, crossing onto the Lower Lake map, to the intersection of the boundary line and State Highway 20 north of Phipps Creek; then

(28) Proceed west in a straight line to the 1,200-foot elevation contour; then

(29) Proceed northerly along the 1,200-foot elevation contour, crossing onto the Benmore Canyon map, and continuing along the 1,200-foot elevation contour to its intersection with an unnamed trail in section 31, T14N/R6W; then

(30) Proceed north in a straight line to State Highway 20; then

(31) Proceed west along State Highway 20, returning to the beginning point.

Signed: March 2, 2022.

Mary G. Ryan,

Administrator.

Approved: March 2, 2022.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–04999 Filed 3–8–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2018–0292]

RIN 2126–AC14

Third Party Commercial Driver's License Testers; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: FMCSA is withdrawing a notice of proposed rulemaking (NPRM) to allow States to permit a third party skills test examiner to administer the Commercial Driver's License (CDL) skills test to applicants to whom the examiner has also provided skills training, a practice now prohibited under FMCSA regulations. FMCSA takes this action after considering the comments received following publication of the NPRM, as explained further below.

DATES: The proposed rule published July 9, 2019, at 84 FR 32689, is withdrawn as of March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–0831, *nikki.mcdavid@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In October 2017, as part of the Department's review of existing regulations to evaluate their continued necessity and effectiveness, DOT published a ''Notification of Regulatory Review'' seeking public input on existing rules and other agency actions (82 FR 45750 (Oct. 2, 2017)). In response to that notification, SAGE Truck Driving Schools (SAGE) recommended that FMCSA eliminate the prohibition, set forth in § 383.75(a)(7), that prevents

States from permitting a third party skills examiner from administering a CDL skills test to an applicant who received skills training from that examiner. In support of its recommendation, SAGE asserted that the prohibition is unnecessary because: (1) State-based CDL testing compliance agencies have many other effective tools to detect and prevent fraud in CDL skills testing; (2) the rule causes significant inconvenience and cost for third party testers, CDL applicants, the transportation industry, and the public; (3) it needlessly makes CDL training and testing operation more difficult and costly, thereby exacerbating the CMV driver shortage; and (4) it contributes to CDL testing delays in some States.

On July 9, 2019, FMCSA published an NPRM [1] to amend 49 CFR 383.75(a)(7) to allow States to permit a third party skills test examiner to administer the CDL skills test to applicants to whom the examiner has also provided skills training. This practice is currently prohibited under 49 CFR 383.75(a)(7). When issuing the proposal, the Agency noted that lifting the restriction could potentially alleviate skills testing delays and reduce cost and inconvenience for third party testers and CDL applicants, without negatively impacting safety.

The Agency received 95 comments on the NPRM before the deadline of September 9, 2019. Most comments were submitted by individuals, many of whom identified themselves as trainers, testers, or drivers. Several organizations commented on the proposal, including the American Bus Association, Commercial Vehicle Training Association (CVTA), Truckload Carriers Association, National Limousine Association, American Trucking Associations, the Minnesota Trucking Association, and the Minnesota School Bus Operators Association. The following State driver licensing agencies also commented on the NPRM: Virginia Department of Motor Vehicles; Missouri Department of Revenue; Oregon Department of Transportation, Driver and Motor Vehicle Services; Washington State Department of Licensing; and Minnesota Department of Public Safety, Driver and Vehicle Services Division.

Most commenters opposed the NPRM, citing concerns about fraud, conflict of interest, or examiner bias. These commenters argued that allowing the same individual to train and test the applicant could undermine the integrity of the skills testing process, thereby negatively impacting safety. As one individual noted, ''The proposed rule removes the necessary impartiality of the CDL examiner, allowing the instructor to fail or pass student drivers with whom they have developed a relationship. This is not a fair assessment of the candidates' abilities.'' A commenter identifying as a trainer with 22 years of experience expressed a similar concern, explaining that ''the reason another trainer has to test my student is to prevent bias or just passing them along.'' Another commenter said that, while some companies ''will do due diligence to make sure drivers are trained properly,'' lifting the restriction would remove necessary checks and balances from the skills testing process. The Minnesota Trucking Association stated that lifting the restriction ''would cause an increased risk of intentional and unintentional bias in testing results.'' One individual observed that current alternative approaches to detecting fraud in CDL testing, identified in the NPRM, ''rely on the principle of deterrence rather than prevention . . . which allows unqualified drivers to obtain their CDLs and legally operate [commercial] motor vehicles on public roadways without proper training—at least until the fraud is discovered.''

All of the States that commented on the NPRM (Virginia, Oregon, Washington, Minnesota, and Missouri) also raised concern that lifting the prohibition could negatively impact safety by undermining the integrity of skills testing. As Washington stated, the NPRM ''adds substantial risk'' to third party testing ''by introducing an apparent conflict of interest.''

Additionally, three States voiced concerns about accepting skills testing results for applicants tested in States that had lifted the restriction. Oregon stated that, while the proposed change is ''permissive in nature, given the requirement to accept out-of-State CDL skills test results, adoption by other jurisdictions will pose a risk that we have deemed unacceptable.'' Similarly, Virginia noted it would be ''unable to guard against fraud in these situations and that unsafe drivers will be licensed to drive interstate impacting safety in Virginia and elsewhere.'' Washington expressed ''strong concerns with accepting skills test results from other jurisdictions allowing [third party skills test examiners] to test the individuals they train.''

Most of the organizations that commented in support of the proposal believed that lifting the restriction would not compromise safety, due to the extensive fraud detection measures already in place. As CVTA noted, ''[t]hird party testing occurs within a powerful network of state and federal regulation . . . [which] upholds the integrity of the examination process because it monitors examiner activity to prevent fraud.'' Some individual commenters argued that permitting the same individual to train and test the applicant would not result in a conflict of interest. One instructor stated he finds the current restriction offensive because it presumes that ''all teachers are frauds and not trustworthy to test their own students.'' Several commenters asserted that lifting the restriction could enhance safety by expanding the opportunity for students to benefit from the expertise of different instructors.

Some commenters supporting the proposal said that it would increase flexibility and efficiencies for both applicants and third party testers and would alleviate skills testing delays. For example, Greyhound Lines, Inc. stated that ''[a]llowing Greyhound trainers to administer the CDL test to the drivers they train enables the drivers who pass the test to start their work assignments earlier than if they have to wait for a State-administered test.''

The Agency carefully considered all comments. FMCSA acknowledges the NPRM's potential for increasing the efficiency and flexibility of the skills testing process and reducing skills test delays.[2] The Agency is persuaded, however, by numerous comments citing the NPRM's potential for undermining the integrity of the CDL skills testing process and negatively impacting highway safety. FMCSA has therefore decided to retain the current regulation (49 CFR 383.75(a)(7)) prohibiting States from permitting a third party skills test examiner to administer the CDL skills test to applicants to whom the examiner has also provided skills training. The Agency hereby withdraws the July 9, 2019, NPRM referenced above, based on the same legal authorities on which it issued the NPRM, set forth at 84 FR 32689, 32691.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Acting Administrator.

[FR Doc. 2022–04968 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–EX–P

[1] To view the NPRM and comments, go to *https://www.regulations.gov/document/FMCSA-2018-0292-0002.*

[2] In the NPRM, FMCSA requested quantitative data addressing the impact of the current prohibition on skills testing delays, but did not receive data addressing this issue.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2018–0332]

RIN 2126–AC23

Commercial Driver's License Out-of-State Knowledge Test; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: FMCSA is withdrawing a notice of proposed rulemaking (NPRM) to allow driver applicants to take the commercial driver's license (CDL) general and specialized knowledge tests in a State (the testing State) other than the applicant's State of domicile. The NPRM also proposed that the applicant's State of domicile would be required to accept knowledge test results from the testing State. As explained further below, FMCSA is taking this action after considering the comments received following the publication of the NPRM.

DATES: The proposed rule published July 29, 2019, at 84 FR 36552 is withdrawn as of March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 0001, (202) 366–0831, *nikki.mcdavid@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In August 2017, FMCSA issued regulatory guidance titled, ''Commercial Driver's License Standards: Regulatory Guidance Concerning the Issuance of Commercial Learner's Permits'' (August 2017 Guidance) (82 FR 36101 (Aug. 3, 2017)), which clarified the circumstances under which a CDL applicant's State of domicile may accept the results of knowledge testing administered to the applicant in another State. The August 2017 Guidance permits the testing State and the State of domicile to enter into a voluntary agreement prior to the general knowledge test being administered by the testing State. The guidance emphasizes that, because only the State of domicile is authorized to issue a Commercial Learner's Permit (CLP) or CDL, the responsibility for compliance with the requirements of 49 CFR 383.71 (driver application and certification) and 383.73 (CLP/CDL issuance) remains with the State of domicile. To the Agency's knowledge, no States have entered into an agreement pursuant to the August 2017 Guidance.

On July 29, 2019, FMCSA published in the **Federal Register** (Docket No. FMCSA–2018–0332, 84 FR 36552) an NPRM [1] to amend 49 CFR 383.79(a)(1) and (2) by permitting a State also to administer knowledge test(s) to an out-of-State applicant, and by requiring the State of domicile also to accept those knowledge testing results.

FMCSA received comments on the NPRM from the following parties: The American Association of Motor Vehicle Administrators (AAMVA); American Trucking Associations (ATA); California Department of Motor Vehicles (California); C. R. England, Inc.; Illinois Secretary of State (Illinois); Iowa Department of Transportation (Iowa); Minnesota Department of Public Safety, Driver and Vehicle Services Division (Minnesota); Minnesota State Patrol (MSP); Montana Department of Justice (Montana); National School Transportation Association (NSTA); Pennsylvania Department of Transportation (Pennsylvania); Truckload Carriers Association (TCA); Virginia Department of Motor Vehicles (Virginia); and six private citizens.

To improve the Agency's understanding of the impact of the NPRM on States and CDL applicants, FMCSA posed several specific questions. The questions and a summary of the responsive comments are set forth below.

Question 1. To what extent will State Driver Licensing Agencies (SDLAs) need to adapt existing procedures and processes to receive out-of-State knowledge testing results and remotely deliver the physical CLP or upgraded CDL? What are the costs associated with making these changes?

Responses: All SDLAs responding to this question stated that changes to existing CLP application and issuance procedures and software would be necessary; some also questioned how remote delivery of the CLP credential would be accomplished.

Only Pennsylvania responded to the cost question specifically, estimating a cost of approximately $525,000 for the system changes needed to accept knowledge test results from other States and a cost of approximately $1.6 million to begin offering knowledge testing to out-of-State driver applicants. Other States noted there would be costs associated with changing existing systems and processes to accept test results from other States but did not quantify the amounts.

All State commenters said the NPRM would require changes in current procedures for processing knowledge test results and issuing CLPs. Minnesota and Virginia noted, for example, they would need to revise current processes to allow an applicant's record to remain ''open'' in pending status while waiting to receive the applicant's out-of-State knowledge test results. California questioned how it would receive the completion of knowledge testing notification from the testing State.

Question 2. What additional State implementation concerns are raised by [the NPRM]?

Responses: Pennsylvania noted that there is currently ''no way to verify the person taking the knowledge test in another jurisdiction is in fact the same person taking the skills test later in the process,'' adding that ''[the Commercial Skills Test Information Management System] does not provide a mechanism for verification with other jurisdictions.'' Virginia also noted security concerns, stating that ''the requirement to issue a CLP remotely undermines the current processes Virginia has in place to ensure that a credential is securely issued to the applicant.'' California also expressed concern over the proposed remote delivery requirement, questioning how secure delivery could be assured if the CLP credential was sent to an address outside their State. Montana noted ''grave concerns about the real and substantial threat of fraudulent activity'' if Montana is required to issue a CLP to an applicant who does not personally appear at a Montana driver license location. Minnesota and Virginia cited ongoing difficulties in the processing of out-of-State skills testing results, which could carry over to the processing of knowledge testing results.

Question 3. Would 2 years, or 3 years, allow SDLAs sufficient time to achieve compliance with the proposed requirement to accept any out-of-state knowledge test results? Please explain the basis of your preferred compliance date.

Responses: Three States responded to this question. Pennsylvania said it would need 2.5 years to accommodate necessary changes in State laws and processes. California and Virginia said they would need 3 years to achieve compliance.

Question 4. If [the NPRM] is finalized, would your SDLA offer knowledge testing to out-of-state CLP applicants or

[1] To view the NPRM and the comments we received, go to *https://www.regulations.gov/document/FMCSA-2018-0332-0001.*

CDL holders wishing to add an endorsement to their license? Why or why not?

Responses: Of the States that responded directly to this question, Minnesota and California said they would not offer out-of-State testing; Virginia said it would likely offer out-of-State testing if authorized by the State legislature. Iowa also implied that it would offer knowledge testing to out-of-state CLP applicants by noting that Iowa-based driver training programs, which attract many out-of-State students, bring ''tremendous economic value'' to the State. Pennsylvania said that, without ''process improvements and additional funding,'' it would be difficult to provide testing out-of-State applicants.

Question 5. Would the proposed changes allow applicants who take driver training outside their State of domicile to obtain a CLP or upgraded CDL more efficiently? If so, please provide specific examples of time or cost savings that may accrue if the proposed changes were adopted.

Responses: Pennsylvania responded that, if its concerns were addressed, allowing out-of-State knowledge testing ''could be a significant achievement in enhancing access for our future commercial drivers and their employers.'' Iowa predicted the proposed rule would enhance efficiency and that associated cost savings would accrue to employers, trainers, and drivers. ATA, TCA, and other commenters also believed the rule would enable applicants to receive their CLPs more efficiently. Minnesota, which does not intend to provide knowledge testing to out-of-State applicants, stated that ''[t]he only efficiency with this proposal is to truck driving students who take training in another state that is not a border state.''

Commenters provided additional input beyond answering these five questions, as summarized below.

Some commenters, including ATA, TCA, and NSTA, believed the proposed rule would have no detrimental impact on safety because all CLP applicants must be tested and licensed in accordance with the standards established by the May 9, 2011, final rule titled, ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (76 FR 26854). Some States expressed concern that, if adopted, the proposed rule would undermine the State of domicile's ability to maintain control over the testing process and ensure that only qualified drivers obtain a CLP. Several commenters commended the proposed rule for relieving the time and travel cost burden on CLP applicants who must return to their State of domicile to take the knowledge test after receiving training in another State. On the other hand, one commenter stated there is no undue burden imposed by requiring a CLP applicant to take the knowledge test in their State of domicile, noting that ''[l]earning needed to pass the written knowledge test can be done by reading the written materials available from any SDLA.''

Several commenters noted that the proposed rule would benefit driver training schools and motor carriers by enhancing efficiency of the training process, thereby helping to alleviate driver shortages. As one commenter explained, a more efficient testing process will encourage more drivers to apply for a CDL, which means ''more opportunities to fill the gap between the supply and demand of commercially-licensed drivers.''

Two commenters asserted that FMCSA is exceeding its legal authority over the States' commercial licensing processes by requiring the State of domicile to accept knowledge test results from another State. Virginia stated that the rule is an unfunded mandate and FMCSA has not indicated it will provide funding to help States comply. Some States noted the potential loss of testing fees if applicants domiciled in their State elect to take the knowledge test in another State.

The Agency carefully considered all comments. The NPRM was intended to promote further flexibility in the CDL issuance process without negatively impacting safety. All State commenters noted, however, that due to process complexities associated with the proposed change, SDLAs would need to implement significant changes to accommodate the receipt of out-of-State knowledge test results. Given States' security and operational concerns surrounding out-of-State knowledge testing, including remote delivery of the CLP credential, FMCSA concludes the proposed change is not advisable at this time. The Agency hereby withdraws the July 29, 2019, NPRM, based on the same legal authorities on which it issued the NPRM, set forth at 84 FR 36552, 36553. The Agency notes, however, that States may enter into voluntary agreements for out-of-State knowledge testing in accordance with the August 2017 Guidance discussed above.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Acting Administrator.

[FR Doc. 2022–04966 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 87, No. 46
Wednesday, March 9, 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

March 3, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 8, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* 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.

Farm Service Agency

Title: Organic and Transitional Education and Certificate Program.

OMB Control Number: 0560–0304.

Summary of Collection: As USDA is providing assistance through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; Division B, Title I, Pub. L. 116–136), Farm Service Agency (FSA) has created the Organic and Transitional Education and Certificate Program (OTECP) for certified operations and transitional operations that incurred eligible expenses in FY 2020, 2021, and 2022. Producers and handlers incur significant costs to obtain or renew USDA organic certification each year, and the economic challenges due to the COVID–19 pandemic have made obtaining and renewing USDA organic certification financially challenging for many operations.

Need and Use of the Information: In order for FSA to determine whether a producer is eligible for OTECP and to calculate a payment, an applicant is required to submit form FSA–883, Organic and Transitional Education and Certification Program (OTECP). Applicants must also have the following forms on file with FSA: AD–2047, Customer Data Worksheet, and SF–3881, ACH Vendor/Miscellaneous Payment Enrollment Form. The information collection request is required for the producers and handlers to provide their status as either a certified operation or transitional operation and their eligible expenses to get the OTECP payments.

Description of Respondents: Businesses or other for-profit and Farms.

Number of Respondents: 13,250.

Frequency of Responses: Reporting; Other (one-time).

Total Burden Hours: 22,450.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–04909 Filed 3–8–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Census Bureau

2020 Census Tribal Consultation; Virtual Public Meeting

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The Census Bureau will conduct a tribal consultation on the next set of 2020 Census Data Products on March 24, 2022, via national webinar, and review the 2010 Demonstration Data Product—Demographic and Housing Characteristics File (DHC). The tribal consultation meeting reflects the Census Bureau's continuous commitment to strengthen nation-to-nation relationships with federally recognized tribes. The Census Bureau's procedures for outreach, notice, and consultation ensure involvement of tribes, to the extent practicable and permitted by law, before making decisions or implementing policies, rules, or programs that affect federally recognized tribal governments. These meetings are open to citizens of federally and state recognized tribes by invitation. In that regard, the Census Bureau is seeking comments on the 2010 Demonstration Data—DHC, and asking tribal governments to identify the problematic table, level of geography, and a description of the use case, along with the likely implications should the data be released as-is. Tribes will have four weeks after consultation to analyze the 2010 Demonstration Data Product—DHC.

DATES: The Census Bureau will conduct the tribal consultation webinar on Thursday, March 24, 2022, from 3:00 p.m. to 4:30 p.m. EDT. Any questions or topics to be considered in the tribal consultation meetings must be received in writing via email by Tuesday, March 22, 2022.

ADDRESSES: The Census Bureau tribal consultation webinar meeting will be held via the WebEx platform at the following presentation link: *https://uscensus.webex.com/uscensus/j.php?MTID=mbbb8b045ae75775d741beb2e914814e3* Submit your comments by email. Send comments to: *OCIA.TAO@census.gov.*

FOR FURTHER INFORMATION CONTACT: Van Lawrence, Acting Tribal Affairs Coordinator, Office of Congressional

and Intergovernmental Affairs, Intergovernmental Affairs Office, U.S. Census Bureau, Washington, DC 20233; telephone (301) 763–6100; or email at *ocia.tao@census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau is planning one national webinar on March 24, 2022, with federally and state recognized tribes, which will provide a forum for tribes to review the 2010 Demonstration Data Product—Demographic and Housing Characteristics File (DHC). This demonstration data product represents the most recent development version of the 2020 Census Disclosure Avoidance System (DAS) applied to published 2010 Census Data. The 2010 Demonstration Data Product—DHC will provide demographic and housing characteristics, including age, sex, race, Hispanic or Latino origin, relationship to householder, household type, couple type, housing tenure and vacancy. Some subjects are repeated by major OMB race/ethnicity groups for the household and group quarters population. Specifically, based on your analysis, we would like to know which data would be deemed unusable for your use cases. It will be helpful if you can identify the problematic table, level of geography, and a description of the use case, along with the likely implications should the data be released as-is.

In accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, issued November 6, 2000, the Census Bureau has adhered to its tribal consultation policy by seeking the input of tribal governments in the planning and implementation of the 2020 Census with the goal of ensuring the most accurate counts and data for the American Indian and Alaska Native population. In that regard, the Census Bureau is seeking comments on the 2010 Demonstration Data Product—DHC and is reviewing feedback received on the Detailed DHC tables.

Demographic and Housing Characteristics File (DHC)

The DHC will include some of the demographic and housing tables previously included in the 2010 Census Summary File 1 (SF1).

- *Subjects:* Age, sex, race, Hispanic or Latino origin, household type, family type, relationship to householder, group quarters population, housing occupancy, and housing tenure. Some subjects are repeated for major OMB race/ethnicity groups.
- *Access: data.census.gov.*
- *Lowest level of geography:* To be determined.
- *Production Date:* Tentatively 2022.

Detailed Demographic and Housing Characteristics (Detailed DHC)

The Detailed DHC will provide population counts, as well as demographic and housing statistics for detailed racial and ethnic groups, and American Indian and Alaska Native tribes and villages. These types of statistics were previously included in the 2010 Census Summary File 2 (SF2) and the 2010 American Indian and Alaska Native Summary File (AIANSF). In addition, the Detailed DHC will include a few tables from the 2010 Summary File 1 (SF1) that are not included in the DHC.

- *Subjects:* Detailed racial and ethnic groups, American Indian and Alaska Native tribes and villages, and complex household composition and characteristics tables (*e.g.,* population in occupied housing units) not included in DHC.
- *Access: data.census.gov.*
- *Lowest level of geography:* To be determined.
- *Date:* To be determined.

Information about the content of these data products was released on September 16, 2021. Tribes will have four weeks after consultation to analyze the 2010 Demonstration Data Product—DHC.

1. Input and comments due by April 21, 2022. Submit your comments by email. Send comments to: *Melissa.K.Bruce@census.gov* or *OCIA.TAO@census.gov.*

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: March 3, 2022.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–04924 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with January anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with January anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, except for the administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (China), Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal**

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Register notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Respondent Selection—Wooden Bedroom Furniture From China

In the event that Commerce limits the number of respondents for individual examination in the antidumping duty administrative review of wooden bedroom furniture from China, for purposes of the January 1, 2021, through December 31, 2021 POR, Commerce intends to select respondents based on volume data contained in responses to a Q&V Questionnaire. All parties under review are hereby notified that they must timely respond to the Q&V Questionnaire. Commerce's Q&V Questionnaire, along with certain additional questions, will be available in a document package on Commerce's website at *https://enforcement.trade.gov/download/prc-wbf/index.html* on the date that this notice is published in the **Federal Register**. Responses to the Q&V Questionnaire must be filed with the respondents' Separate Rate Application or Separate Rate Certification (see the Separate Rates section below) and their responses to the additional questions, and must be received by Commerce by no later than 30 days after publication of this notice in the **Federal Register**. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, Commerce does not intend to grant any extensions for the submission of responses to the Q&V Questionnaire.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. In addition, all firms that wish to qualify for separate rate status in the antidumping duty administrative review of wooden bedroom furniture from China, must complete, as appropriate, either a

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

Separate Rate Application or Certification, and respond to the additional questions and the Q&V Questionnaire on Commerce's website at *https://enforcement.trade.gov/download/prc-wbf/index.html.* For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. For the antidumping duty administrative review of wooden bedroom furniture from China, Separate Rate Certifications, as well as a response to the additional questions and the Q&V Questionnaire in the document package, are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice.

For the antidumping duty administrative review of wooden bedroom furniture from China, Separate Rate Applications, as well as a response to the additional questions and the Q&V Questionnaire in the document package, are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for respondent selection. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status *unless* they respond to all parts of the questionnaire as mandatory respondents.

Furthermore, this notice constitutes public notification to all firms for which an antidumping duty administrative review of wooden bedroom furniture from China has been requested, that are seeking separate rate status in the review, that they must submit a timely Separate Rate Application or Certification (as appropriate) as described above, and a timely response to the additional questions and the Q&V Questionnaire in the document package on Commerce's website in order to receive consideration for separate-rate status. In other words, Commerce will not give consideration to any timely Separate Rate Application or Certification made by parties who failed to respond in a timely manner to the additional questions and the Q&V Questionnaire. All information submitted by respondents in the antidumping duty administrative review of wooden bedroom furniture from China is subject to verification. As noted above, the Separate Rate Application, the Separate Rate Certification, the additional questions, and the Q&V Questionnaire will be available on Commerce's website on the date of publication of this notice in the **Federal Register**.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than January 31, 2023.

	Period to be reviewed
AD proceedings	
CANADA: Softwood Lumber,[5] A–122–857	1/1/21–12/31/21
0752615 B.C Ltd./752615 B.C Ltd./Fraserview Remanufacturing Inc, DBA Fraserview Cedar Products	
10104704 Manitoba Ltd O/A Woodstock Forest Product	
1074712 BC Ltd./DBA Quadra Cedar	
5214875 Manitoba Ltd.	
54 Reman	
9224–5737 Quebec Inc. (aka A.G. Bois)	
AA Trading Ltd.	
Abitibi-LP Engineered Wood II Inc.; Abitibi-LP Engineered Wood Inc.; Forest Products Mauricie LP; Produits Forestiers Petit-Paris Inc.; Societe en commandite Scierie Opitciwan; Resolute Growth Canada Inc.	
Absolute Lumber Products Ltd.	
Adwood Manufacturing Ltd.	
AJ Forest Products Ltd.	
Aler Forest Products Ltd.	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
All American Forest Products Inc.	
Alpa Lumber Mills Inc.	
Andersen Pacific Forest Products Ltd.	
Anglo American Cedar Products Ltd.; Anglo-American Cedar Products Ltd.	
Antrim Cedar Corporation	
Aquila Cedar Products Ltd.	
Arbec Lumber Inc. (aka Arbec Bois Doeuvre Inc.)	
Aspen Planers Ltd.	
B&L Forest Products Ltd.	
B.B. Pallets Inc. (aka Les Palettes B.B. Inc.)	
Babine Forest Products Limited	
Bakerview Forest Products Inc.	
Bardobec Inc.	
Barrette-Chapais Ltee	
BarretteWood Inc.	
Benoît & Dionne Produits Forestiers Ltee (aka Benoît & Dionne Forest Products Ltd.)	
Best Quality Cedar Products Ltd.	
Blanchet Multi Concept Inc.	
Blanchette & Blanchette Inc.	
Bois Aise de Montreal Inc.	
Bois Bonsaï Inc.	
Bois Daaquam inc. (aka Daaquam Lumber Inc.)	
Bois D'oeuvre Cedrico Inc. (aka Cedrico Lumber Inc.)	
Bois et Solutions Marketing SPEC, Inc. (aka SPEC Wood & Marketing Solution or SPEC Wood and Marketing Solutions Inc.)	
Boisaco Inc.	
Boscus Canada Inc.	
Boucher Bros. Lumber Ltd.	
BPWood Ltd.	
Bramwood Forest Inc.	
Brink Forest Products Ltd.	
Brunswick Valley Lumber Inc.	
Burrows Lumber (CD) Ltd., Theo A. Burrows Lumber Company Limited	
Busque & Laflamme Inc.	
Campbell River Shake & Shingle Co. Ltd.	
Canada Pallet Corp.	
Canadian Forest Products Ltd.; Canfor Wood Products Marketing Ltd.; Canfor Corporation	
Canasia Forest Industries Ltd.	
Canyon Lumber Company Ltd.	
Careau Bois inc.	
CarlWood Lumber Ltd.	
Carrier & Begin Inc.	
Carrier Forest Products Ltd.	
Carrier Lumber Ltd.	
Carter Forest Products Inc.	
Cedar Island Forest Products Ltd.	
Cedar Valley Holdings Ltd.	
Cedarcoast Lumber Products	
Cedarland Forest Products Ltd.	
Cedarline Industries Ltd.	
Central Cedar Ltd.	
Central Forest Products Inc.	
Centurion Lumber Ltd.	
Chaleur Forest Products Inc.	
Chaleur Forest Products LP	
Channel-ex Trading Corporation	
CHAP Alliance Inc./L'Atelier de Réadaptation au Travil de Beauce Inc.	
Clair Industrial Development Corp. Ltd.	
Clermond Hamel Ltee	
CLG Enterprises Inc.	
CNH Products Inc.	
Coast Clear Wood Ltd.	
Coast Mountain Cedar Products Ltd.	
Columbia River Shake & Shingle Ltd./Teal Cedar Products Ltd., DBA the Teal Jones Group.	
Commonwealth Plywood Co. Ltd.	
Comox Valley Shakes (2019) Ltd.	
Conifex Fibre Marketing Inc.	
Coulson Manufacturing Ltd.	
Cowichan Lumber Ltd.	
CS Manufacturing Inc. (dba Cedarshed)	
CWP—Industriel Inc.	
CWP—Montreal Inc.	
D & D Pallets Ltd.	
Dakeryn Industries Ltd.	

	Period to be reviewed
Decker Lake Forest Products Ltd.	
Deep Cove Forest Products, Inc.	
Delco Forest Products Ltd.	
Delta Cedar Specialties Ltd.	
Devon Lumber Co. Ltd.	
DH Manufacturing Inc.	
Direct Cedar Supplies Ltd.	
Distribution Rioux Inc.	
Doubletree Forest Products Ltd.	
Downie Timber Ltd.	
Dunkley Lumber Ltd.	
EACOM Timber Corporation	
East Fraser Fiber Co. Ltd.	
Edgewood Forest Products Inc.	
Elrod Cartage Ltd.	
ER Probyn Export Ltd.	
Falcon Lumber Ltd.	
Fontaine Inc.	
Foothills Forest Products Inc.	
Fraser Specialty Products Ltd.	
FraserWood Industries Ltd.	
Furtado Forest Products Ltd.	
Glandell Enterprises Inc.	
Goldband Shake & Shingle Ltd.	
Goldwood Industries Ltd.	
Goodfellow Inc.	
Gorman Bros. Lumber Ltd.	
Greendale Industries Inc.	
GreenFirst Forest Products (QC) Inc.	
Greenwell Resources Inc.	
Griff Building Supplies Ltd.	
Groupe Crete Chertsey Inc.	
Groupe Crete Division St-Faustin Inc.	
Groupe Lebel Inc.	
Groupe Lignarex Inc.	
H.J. Crabbe & Sons Ltd.	
Haida Forest Products Ltd.	
Halo Sawmill Manufacturing Limited Partnership/Halo Sawmill, a division of Delta Cedar Specialties Ltd.	
Hampton Tree Farms, LLC (dba Hampton Lumber Sales Canada)	
Hornepayne Lumber LP	
Hudson Mitchell & Sons Lumber Inc.	
Hy Mark Wood Products Inc.	
Imperial Cedar Products Ltd.	
Independent Building Materials Distribution Inc.	
Interfor Corporation/Interfor Sales & Marketing Ltd.	
Intertran Holdings Ltd. (dba Richmond Terminal)	
Island Cedar Products Ltd.	
Ivor Forest Products Ltd.	
J&G Log Works Ltd.	
J.D. Irving, Limited	
J.H. Huscroft Ltd.	
Jan Woodlands (2001) Inc.	
Jasco Forest Products Ltd.	
Jazz Forest Products Ltd.	
Jhajj Lumber Corporation	
Kalesnikoff Lumber Co. Ltd.	
Kan Wood Ltd.	
Kebois Ltee/Ltd	
Kelfor Industries Ltd.	
Kermode Forest Products Ltd.	
Keystone Timber Ltd.	
Lafontaine Lumber Inc.	
Langevin Forest Products Inc.	
Lecours Lumber Co. Limited	
Leisure Lumber Ltd.	
Les Bardeaux Lajoie Inc.	
Les Bois d'oeuvre Beaudoin Gauthier inc.	
Les Bois Martek Lumber	
Les Bois Traites M.G. Inc.	
Les Chantiers de Chibougamau Ltd./Ltee	
Les Industries P.F. Inc.	
Les Produits Forestiers D&G Ltee (aka D&G Forest Products Ltd.)	
Les Produits Forestiers Sitka Inc. (aka Sitka Forest Products Inc.)	
Leslie Forest Products Ltd.	

	Period to be reviewed
Lignum Forest Products LLP	
Linwood Homes Ltd.	
Lonestar Lumber Inc.	
Lulumco Inc.	
Magnum Forest Products Ltd.	
Maibec Inc.	
Mainland Sawmill, a division of Terminal Forest Products	
Manitou Forest Products Ltd.	
Manning Forest Products Ltd.; Sundre Forest Products Inc.; Blue Ridge Lumber Inc.; West Fraser Mills Ltd.	
Marcel Lauzon Inc.	
Marwood Ltd.	
Materiaux Blanchet Inc.	
Metrie Canada Ltd.	
Mid Valley Lumber Specialties Ltd.	
Midway Lumber Mills Ltd.	
Mill & Timber Products Ltd.	
Millar Western Forest Products Ltd.	
Mirax Lumber Products Ltd.	
Mobilier Rustique (Beauce) Inc.	
Modern Terminal Ltd.	
Monterra Lumber Mills Limited	
Morwood Forest Products Inc.	
Multicedre Ltee	
Murray Brothers Lumber Company Ltd.	
Nagaard Sawmill Ltd.	
Nakina Lumber Inc.	
National Forest Products Ltd.	
Nicholson and Cates Ltd.	
Nickel Lake Lumber	
Norsask Forest Products Inc.	
Norsask Forest Products Limited Partnership	
North American Forest Products Ltd. (located in Abbotsford, British Columbia)	
North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick)	
North Enderby Timber Ltd.	
Northland Forest Products Ltd.	
NSC Lumber Ltd.	
Olympic Industries Inc.	
Olympic Industries ULC	
Oregon Canadian Forest Products Inc. d.b.a. Oregon Canadian Forest Products	
Pacific Coast Cedar Products Ltd.	
Pacific Lumber Remanufacturing Inc.	
Pacific Pallet Ltd.	
Pacific Western Wood Works Ltd.	
PalletSource Inc.	
Parallel Wood Products Ltd.	
Pat Power Forest Products Corporation	
Peak Industries (Cranbrook) Ltd.	
Phoenix Forest Products Inc.	
Pine Ideas Ltd.	
Pioneer Pallet & Lumber Ltd.	
Porcupine Wood Products Ltd.	
Portbec Forest Products Ltd (aka Les Produits Forestiers Portbec Ltée)	
Power Wood Corp.	
Precision Cedar Products Corp.	
Prendiville Industries Ltd. (aka Kenora Forest Products)	
Produits Forestiers Petit Paris Inc.	
Produits forestiers Temrex, s.e.c. (aka Temrex Forest Products LP)	
Produits Matra Inc.	
Promobois G.D.S. Inc.	
Rayonier A.M. Canada GP	
Rembos Inc.	
Rene Bernard Inc.	
Rick Dubois	
Rielly Industrial Lumber Inc.	
River City Remanufacturing Inc.	
S&R Sawmills Ltd.	
S&W Forest Products Ltd.	
San Group	
San Industries Ltd.	
Sapphire Lumber Company	
Sawarne Lumber Co. Ltd.	
Scierie Alexandre Lemay & Fils Inc.	
Scierie St-Michel Inc.	
Scierie West Brome Inc.	

	Period to be reviewed
Scott Lumber Sales/Scott Lumber Sales Ltd.	
Sechoirs de Beauce Inc.	
Shakertown Corp.	
Sigurdson Forest Products Ltd.	
Silvaris Corporation	
Sinclar Group Forest Products Ltd.	
Skana Forest Products Ltd.	
Skeena Sawmills Ltd.	
Sonora Logging Ltd.	
Source Forest Products	
South Beach Trading Inc.	
South Coast Reman Ltd./Southcoast Millwork Ltd.	
South Fraser Container Terminals	
Specialiste du Bardeau de Cedre Inc./Specialiste du Bardeau de Cedre Inc. (SBC)	
Spruceland Millworks Inc.	
Star Lumber Canada Ltd.	
Suncoast Industries Inc.	
Suncoh Custom Lumber Ltd.	
Sundher Timber Products Inc.	
Surplus G Rioux	
Surrey Cedar Ltd.	
Swiftwood Forest Products Ltd.	
T&P Trucking Ltd.	
Taan Forest Limited Partnership (aka Taan Forest Products)	
Taiga Building Products Ltd.	
Tall Tree Lumber Company	
Tenryu Canada Corporation	
Terminal Forest Products Ltd.	
TG Wood Products	
The Wood Source Inc.	
Tolko Industries Ltd.; Tolko Marketing and Sales Ltd.; Gilbert Smith Forest Products Ltd.	
Top Quality Lumber Ltd.	
Trans-Pacific Trading Ltd.	
Triad Forest Products Ltd.	
Twin Rivers Paper Co. Inc.	
Tyee Timber Products Ltd.	
Usine Sartigan Inc.	
Vaagen Fibre Canada, ULC	
Valley Cedar 2 Inc.	
Vancouver Specialty Cedar Products Ltd.	
Vanderhoof Specialty Wood Products Ltd.	
Visscher Lumber Inc.	
W.I. Woodtone Industries Inc.	
Waldun Forest Product Sales Ltd.	
Watkins Sawmills Ltd.	
West Bay Forest Products Ltd.	
Western Forest Products Inc.	
Western Lumber Sales Limited	
Western Timber Products, Inc.	
Westminster Industries Ltd.	
Weston Forest Products Inc.	
Weyerhaeuser Co.	
White River Forest Products L.P.	
Winton Homes Ltd.	
Woodline Forest Products Ltd.	
Woodstock Forest Products	
Woodtone Specialties Inc.	
WWW Timber Products Ltd.	
GERMANY: Forged Steel Fluid End Blocks, A–428–847	7/23/20–12/31/21
BGH Edelstahl Siegen GmbH	
Schmiedewerke Groditz GmbH	
voestalpine Bohler Group	
ITALY: Forged Steel Fluid End Blocks, A–475–840	7/23/20–12/31/21
Galperti Group	
IMER International S.p.A.	
Lucchini Mamé Forge S.p.A.	
Mimest S.p.A.	
Metalcam S.p.A.[6]	
P. Technologies S.r.l.	
THAILAND: Prestressed Concrete Steel Wire Strand, A–549–820	1/1/21–12/31/21
The Siam Industrial Wire Company, Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hardwood Plywood Products, A–570–051	1/1/21–12/31/21
Anhui Hoda Wood Co., Ltd.	
Cosco Star International Co., Ltd.	

	Period to be reviewed
Happy Wood Industrial Group Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	
Linyi Chengen Import and Export Co., Ltd.	
Linyi Evergreen Wood Co., Ltd.	
Linyi Glary Plywood Co., Ltd.	
Linyi Huasheng Yongbin Wood Co., Ltd.	
Linyi Jiahe Wood Industry Co., Ltd.	
Linyi Sanfortune Wood Co., Ltd.	
Qingdao Top P&Q International Corp.	
Shanghai Brightwood Trading Co., Ltd.	
Shanghai Futuwood Trading Co., Ltd.	
Shanghai Luli Trading Co., Ltd.	
Suqian Hopeway International Trade Co., Ltd.	
Suzhou Oriental Dragon Import and Export Co., Ltd.	
Xuzhou Jiangheng Wood Products Co., Ltd.	
Xuzhou Jiangyang Wood Industries Co., Ltd.	
Xuzhou Timber International Trade Co., Ltd.	
Zhejiang Dehua TB Import & Export Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Wooden Bedroom Furniture, A–570–890	1/1/21–12/31/21
Dongguan Chengcheng Group Co., Ltd.	
Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry, Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs	
Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmont Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.	
Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (PTE) Ltd.	
Golden Well International (HK), Ltd./Producer: Zhangzhou XYM Furniture Product Co., Ltd.	
Guangzhou Maria Yee Furnishings Ltd., Pyla HK Ltd., Maria Yee, Inc.	
Hang Hai Woodcraft's Art Factory	
Jiangmen Kinwai Furniture Decoration Co., Ltd.	
Jiangmen Kinwai International Furniture Co., Ltd.	
Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.	
Jiangsu Yuexing Furniture Group Co., Ltd.	
Nanhai Jiantai Woodwork Co. Ltd., Fortune Glory Industrial, Ltd. (HK Ltd.)	
Perfect Line Furniture Co., Ltd.	
PuTian JingGong Furniture Co., Ltd.	
Shenyang Shining Dongxing Furniture Co., Ltd.	
Shenzhen Forest Furniture Co., Ltd.	
Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd.	
Shenzhen New Fudu Furniture Co., Ltd.	
Shenzhen Wonderful Furniture Co., Ltd.	
Sunforce Furniture (Hui-Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.	
Superwood Co. Ltd., Lianjiang Zongyu Art Products Co., Ltd.	
Tradewinds Furniture Ltd. (successor-in-interest to Nanhai Jiantai Woodwork Co.), Fortune Glory Industrial Ltd. (H.K. Ltd.)	
Wuxi Yushea Furniture Co., Ltd.	
Xiamen Yongquan Sci-Tech Development Co., Ltd.	
Yeh Brothers World Trade Inc.	
Yihua Timber Industry Co., Ltd. (a.k.a. Guangdong Yihua Timber Industry Co., Ltd.)	
Yihua Lifestyle Technology Co., Ltd.	
Zhangjiagang Daye Hotel Furniture Co. Ltd.	
Zhangzhou Guohui Industrial & Trade Co. Ltd.	
Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.	
Zhongshan Fookyik Furniture Co., Ltd.	
Zhongshan Golden King Furniture Industrial Co., Ltd.	
Zhoushan For-Strong Wood Co., Ltd.	
CVD proceedings	
ARGENTINA: Biodiesel, C–357–821	1/1/21–12/31/21
Aceitera General Deheza S.A.	
Bio Nogoya S.A.	
Bunge Argentina S.A.	
Cargill S.A.C.I.	
COFCO Argentina S.A.	
Cámara Argentina de Biocombustibles	
Explora	
GEFCO Argentina	
LDC Argentina S.A.	
Molinos Agro S.A.	
Noble Argentina	
Oleaginosa Moreno Hermanos S.A.	
Patagonia Bioenergia	
Renova S.A.	
T6 Industrial SA (EcoFuel)	

	Period to be reviewed
Unitec Bio S.A.	
Vicentin S.A.I.C.	
Viluco S.A.	
CANADA: Softwood Lumber,[7] C–122–858	1/1/21–12/31/21
0752615 B.C Ltd, Fraserview Remanufacturing Inc, DBA Fraserview Cedar Products	
10104704 Manitoba Ltd O/A Woodstock Forest Product	
1074712 BC Ltd.	
5214875 Manitoba Ltd.	
54 Reman	
9224–5737 Quebec Inc. (aka A.G. Bois)	
AA Trading Ltd.	
Absolute Lumber Products, Ltd.	
Adwood Manufacturing Ltd.	
AJ Forest Products Ltd.	
Aler Forest Products, Ltd.	
All American Forest Products Inc.	
Alpa Lumber Mills Inc.	
Andersen Pacific Forest Products Ltd.	
Anglo-American Cedar Products, Ltd.	
Antrim Cedar Corporation	
Aquila Cedar Products Ltd.	
Arbec Lumber Inc.	
Aspen Planers Ltd.	
B&L Forest Products Ltd.	
B.B. Pallets Inc. (aka Les Palettes B.B. Inc.)	
Babine Forest Products Limited	
Bakerview Forest Products Inc.	
Bardobec Inc.	
Barrette-Chapais Ltee	
BarretteWood Inc.	
Benoit & Dionne Produits Forestiers Ltee (aka Benoit & Dionne Forest Products Ltd.)	
Best Quality Cedar Products Ltd.	
Blanchet Multi Concept Inc.	
Blanchette & Blanchette Inc.	
Bois Aise de Montreal Inc.	
Bois Bonsai Inc.	
Bois D'oeuvre Cedrico Inc. (aka Cedrico Lumber Inc.)	
Bois Daaquam inc. (aka Daaquam Lumber Inc.)	
Bois et Solutions Marketing SPEC, Inc. (aka SPEC Wood & Marketing Solution or SPEC Wood and Marketing Solutions Inc.)	
Boisaco Inc.	
Boscus Canada Inc.	
Boucher Bros. Lumber Ltd.	
BPWood Ltd.	
Bramwood Forest Inc.	
Brink Forest Products Ltd.	
Brunswick Valley Lumber Inc.	
Burrows Lumber (CD) Ltd., Theo A. Burrows Lumber Company Limited	
Busque & Laflamme Inc.	
Campbell River Shake & Shingle Co., Ltd.	
Canada Pallet Corp.	
Canadian Forest Products, Ltd.; Canfor Wood Products Marketing, Ltd.; Canfor Corporation	
Canasia Forest Industries Ltd.	
Canyon Lumber Company, Ltd.	
Careau Bois Inc.	
CarlWood Lumber Ltd.	
Carrier & Begin Inc.	
Carrier Forest Products Ltd.	
Carrier Lumber Ltd.	
Carter Forest Products Inc.	
Cedar Island Forest Products Ltd.	
Cedar Valley Holdings Ltd.	
Cedarcoast Lumber Products	
Cedarland Forest Products Ltd.	
Cedarline Industries Ltd.	
Central Cedar Ltd.	
Central Forest Products Inc.	
Centurion Lumber Ltd.	
Chaleur Forest Products Inc.	
Chaleur Forest Products LP	
Channel-ex Trading Corporation	
Clair Industrial Development Corp. Ltd.	
Clermond Hamel Ltee	
CLG Enterprises Inc.	

	Period to be reviewed
CNH Products Inc.	
Coast Clear Wood Ltd.	
Coast Mountain Cedar Products Ltd.	
Columbia River Shake & Shingle Ltd./Teal Cedar Products Ltd., dba The Teal Jones Group Commonwealth Plywood Co. Ltd.	
Comox Valley Shakes (2019) Ltd.	
Conifex Fibre Marketing Inc.	
Cowichan Lumber Ltd.	
CS Manufacturing Inc. (dba Cedarshed)	
CWP—Industriel inc.	
CWP—Montreal inc.	
D & D Pallets Ltd.	
Dakeryn Industries Ltd.	
Decker Lake Forest Products Ltd.	
Deep Cove Forest Products, Inc.	
Delco Forest Products Ltd.	
Delta Cedar Specialties Ltd.	
Devon Lumber Co. Ltd.	
DH Manufacturing Inc.	
Direct Cedar Supplies Ltd.	
Distribution Rioux Inc.	
Doubletree Forest Products Ltd.	
Downie Timber Ltd.	
Dunkley Lumber Ltd.	
EACOM Timber Corporation	
East Fraser Fiber Co. Ltd.	
Edgewood Forest Products Inc.	
Elrod Cartage Ltd.	
ER Probyn Export Ltd.	
Falcon Lumber Ltd.	
Fontaine Inc.	
Foothills Forest Products Inc.	
Fraser Specialty Products Ltd.	
FraserWood Industries Ltd.	
Furtado Forest Products Ltd.	
Glandell Enterprises Inc.	
Goldband Shake & Shingle Ltd.	
Goldwood Industries Ltd.	
Goodfellow Inc.	
Gorman Bros. Lumber Ltd.	
Greendale Industries Inc.	
GreenFirst Forest Products (QC) Inc.	
Greenwell Resources Inc.	
Griff Building Supplies Ltd.	
Groupe Crete Chertsey Inc.	
Groupe Crete division St-Faustin Inc.	
Groupe Lebel Inc.	
Groupe Lignarex Inc.	
H.J. Crabbe & Sons Ltd.	
Haida Forest Products Ltd.	
Halo Sawmill Manufacturing Limited Partnership	
Hampton Tree Farms, LLC (dba Hampton Lumber Sales Canada)	
Hornepayne Lumber LP	
Hudson Mitchell & Sons Lumber Inc.	
Hy Mark Wood Products Inc.	
Imperial Cedar Products, Ltd.	
Interfor Corporation/Interfor Sales & Marketing Ltd.	
Intertran Holdings Ltd. (dba Richmond Terminal)	
Island Cedar Products Ltd	
Ivor Forest Products Ltd.	
J&G Log Works Ltd.	
J.D. Irving, Limited	
J.H. Huscroft Ltd.	
Jan Woodlands (2001) Inc.	
Jasco Forest Products Ltd.	
Jazz Forest Products Ltd.	
Jhajj Lumber Corporation	
Kalesnikoff Lumber Co. Ltd.	
Kan Wood, Ltd.	
Kebois Ltee/Ltd	
Kelfor Industries Ltd.	
Kermode Forest Products Ltd.	
Keystone Timber Ltd.	
Lafontaine Lumber Inc.	

	Period to be reviewed
Langevin Forest Products Inc.	
L'Atelier de Readaptation au travil de Beauce Inc.	
Lecours Lumber Co. Limited	
Leisure Lumber Ltd.	
Les Bardeaux Lajoie Inc.	
Les Bois d'oeuvre Beaudoin Gauthier Inc.	
Les Bois Martek Lumber	
Les Bois Traites M.G. Inc.	
Les Chantiers de Chibougamau Ltd./Ltee	
Les Industries P.F. Inc.	
Les Produits Forestiers D&G Ltee (aka D&G Forest Products Ltd.)	
Les Produits Forestiers Sitka Inc. (aka Sitka Forest Products Inc.)	
Leslie Forest Products Ltd.	
Lignum Forest Products LLP	
Linwood Homes Ltd.	
Lonestar Lumber Inc.	
Lulumco Inc.	
Magnum Forest Products, Ltd.	
Maibec Inc.	
Mainland Sawmill, a division of Terminal Forest Products Ltd.	
Manitou Forest Products Ltd.	
Marcel Lauzon Inc.	
Marwood Ltd.	
Materiaux Blanchet Inc.	
Metrie Canada Ltd.	
Mid Valley Lumber Specialties Ltd.	
Midway Lumber Mills Ltd.	
Mill & Timber Products Ltd.	
Millar Western Forest Products Ltd.	
Mirax Lumber Products Ltd.	
Mobilier Rustique (Beauce) Inc.	
Modern Terminal Ltd.	
Monterra Lumber Mills Limited	
Morwood Forest Products Inc.	
Multicedre ltee	
Murray Brothers Lumber Company Ltd	
Nagaard Sawmill Ltd.	
Nakina Lumber Inc.	
National Forest Products Ltd.	
Nicholson and Cates Ltd.	
NorSask Forest Products Limited Partnership	
North American Forest Products Ltd. (located in Abbotsford, British Columbia)	
North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick)	
North Enderby Timber Ltd.	
Northland Forest Products Ltd.	
NSC Lumber Ltd.	
Olympic Industries, Inc./Olympic Industries Inc-Reman Code/Olympic Industries ULC/Olympic Industries ULC-Reman/Olympic Industries ULC-Reman Code	
Oregon Canadian Forest Products Inc.	
Pacific Coast Cedar Products Ltd.	
Pacific Lumber Remanufacturing Inc.	
Pacific Pallet, Ltd.	
Pacific Western Wood Works Ltd.	
PalletSource Inc.	
Parallel Wood Products Ltd.	
Pat Power Forest Products Corporation	
Peak Industries (Cranbrook) Ltd.	
Phoenix Forest Products Inc.	
Pine Ideas Ltd.	
Pioneer Pallet & Lumber Ltd.	
Porcupine Wood Products Ltd.	
Portbec Forest Products Ltd (aka Les Produits Forestiers Portbec Ltee)	
Power Wood Corp.	
Precision Cedar Products Corp.	
Prendiville Industries Ltd. (aka Kenora Forest Products)	
Produits Forestiers Petit Paris Inc.	
Produits forestiers Temrex, s.e.c. (aka Temrex Forest Products LP)	
Produits Matra Inc.	
Promobois G.D.S. Inc.	
Rayonier A.M. Canada GP	
Rembos Inc.	
Rene Bernard inc.	
Resolute FP Canada Inc.	
Rick Dubois	

	Period to be reviewed
Rielly Industrial Lumber Inc.	
River City Remanufacturing Inc.	
Roland Boulanger & Cie Ltee	
S&R Sawmills Ltd.	
S&W Forest Products Ltd.	
San Group	
San Industries Ltd.	
Sapphire Lumber Company	
Sawarne Lumber Co. Ltd.	
Scierie Alexandre Lemay & Fils Inc.	
Scierie St-Michel Inc.	
Scierie West Brome Inc.	
Scott Lumber Sales Ltd.	
Sechoirs de Beauce Inc.	
Shakertown Corp.	
Sigurdson Forest Products Ltd.	
Silvaris Corporation	
Sinclar Group Forest Products Ltd.	
Skana Forest Products Ltd.	
Skeena Sawmills Ltd.	
Sonora Logging Ltd.	
Source Forest Products	
South Beach Trading Inc.	
South Coast Reman Ltd./Southcoast Millwork Ltd.	
South Fraser Container Terminals	
Specialiste du Bardeau de Cedre Inc./Specialiste du Bardeau de Cedre Inc. (SBC)	
Spruceland Millworks Inc.	
Star Lumber Canada Ltd.	
Suncoast Industries Inc.	
Suncoh Custom Lumber Ltd.	
Sundher Timber Products Inc.	
Surplus G Rioux	
Surrey Cedar Ltd.	
Swiftwood Forest Products Ltd.	
T&P Trucking Ltd.	
Taan Forest Limited Partnership (aka Taan Forest Products)	
Taiga Building Products Ltd.	
Tall Tree Lumber Company	
Tenryu Canada Corporation	
TG Wood Products	
The Wood Source Inc.	
Tolko Industries Ltd.; Tolko Marketing and Sales Ltd.; Gilbert Smith Forest Products Ltd.	
Top Quality Lumber Ltd.	
Trans-Pacific Trading Ltd.	
Triad Forest Products Ltd.	
Twin Rivers Paper Co. Inc.	
Tyee Timber Products Ltd.	
Usine Sartigan Inc.	
Vaagen Fibre Canada, ULC	
Valley Cedar 2 Inc.	
Vancouver Specialty Cedar Products Ltd.	
Vanderhoof Specialty Wood Products Ltd.	
Visscher Lumber Inc.	
W.I. Woodtone Industries Inc.	
Waldun Forest Product Sales Ltd.	
Watkins Sawmills Ltd.	
West Bay Forest Products Ltd.	
West Fraser Mills Ltd.	
Western Forest Products Inc.	
Western Lumber Sales Limited	
Western Timber Products, Inc.	
Westminster Industries Ltd.	
Weston Forest Products Inc.	
Weyerhaeuser Co.	
White River Forest Products L.P.	
Winton Homes Ltd.	
Woodline Forest Products Ltd.	
Woodstock Forest Products	
Woodtone Specialties Inc.	
WWW Timber Products Ltd.	
GERMANY: Forged Steel Fluid End Blocks, C–428–848	5/26/20–12/31/21
BGH Edelstahl Siegen GmbH	
Schmiedewerke Gröditz GmbH	
voestalpine Bohler Group	

	Period to be reviewed
INDIA: Forged Steel Fluid End Blocks, C–533–894	5/26/20–12/31/21
Bharat Forge Limited [8]	
INDONESIA: Biodiesel, C–560–831	1/1/21–12/31/21
PT. Cermerlang Energi Perkasa (CEP)	
PT. Ciliandra Perkasa	
PT. Musim Mas, Medan	
PT. Pelita Agung Agrindustri	
Wilmar International Ltd.	
ITALY: Forged Steel Fluid End Blocks, C–475–841	5/26/20–12/31/21
Forge Mochieri S.p.A.	
Galperti Group	
Imer International S.p.A.	
Lucchini Mame Forge S.p.A [9]	
Metalcam S.p.A [10]	
Mimest S.p.A.	
P. Technologies S.r.L	

Suspension Agreements

None.

[5] We request that the companies listed for A–122–857 review the spelling of their company name. If a company name is not accurate (*i.e.,* misspelled or incomplete) or appears more than once with different spelling variations, then please notify Commerce of the company's correct legal name in writing within 30 days after the date of publication of this initiation notice. All submissions must be filed electronically at *https://access.trade.gov.*

[6] Entries of merchandise produced and exported by Metalcam S.p.A. are excluded from the antidumping duty order. This exclusion is not applicable to merchandise exported to the United States by Metalcam S.p.A. in any other producer/exporter combination or by third parties that sourced subject merchandise from the excluded producer/exporter combination. *See Forged Steel Fluid End Blocks from the Federal Republic of Germany and Italy: Amended Final Antidumping Duty Determination for the Federal Republic of Germany and Antidumping Duty Orders* 86 FR 7528 (January 29, 2021). This initiation notice covers merchandise (1) produced by a third party and exported by Metalcam S.p.A.; (2) produced by Metalcam S.p.A. and exported by a third party; or (3) exported by a third party that sourced subject merchandise from the excluded producer/exporter combination.

[7] We request that the companies listed for C–122–858 review the spelling of their company name. If a company name is not accurate (*i.e.,* misspelled or incomplete) or appears more than once with different spelling variations, then please notify Commerce of the company's correct legal name in writing within 30 days after the date of publication of this initiation notice. All submissions must be filed electronically at *https://access.trade.gov.*

[8] Commerce previously found the following company to be cross-owned with Bharat Forge Limited: Saarloha Advanced Materials Private Limited. *See Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Correction to Countervailing Duty Orders,* 86 FR 10244 (February 19, 2021).

[9] Commerce previously found the following companies to be cross-owned with Lucchini Mame Forge S.p.A.: Lucchini RS S.p.A.; Lucchini Industries; Bicomet S.p.A.; and Setrans SrL. *See Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Correction to Countervailing Duty Orders,* 86 FR 10244 (February 19, 2021).

[10] Commerce previously found the following companies to be cross-owned with Metalcam S.p.A.: Adamello Meccanica S.r.l.; and B.S. S.r.l. *See Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Correction to Countervailing Duty Orders,* 86 FR 10244 (February 19, 2021).

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[11] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to

[11] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[13] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[14] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: March 3, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–05005 Filed 3–8–22; 8:45 am]

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[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[13] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[14] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain steel nails (nails) from the People's Republic of China (China) were sold in the United States at less than normal value for the period of review (POR) August 1, 2019, through July 31, 2020. Commerce continues to find that the two mandatory respondents, Qingdao D&L Group Ltd. (Qingdao D&L) and Shanghai Yueda Nails Industry Co., Ltd., a.k.a. Shanghai Yueda Nails Co. (Shanghai Yueda), are not eligible for a separate rate and are to be considered part of the China-wide entity. Moreover, we continue to find that Shanghai Curvet Hardware Products Co., Ltd. (Shanghai Curvet) and Tianjin Zhonglian Metals Ware Co., Ltd. (Tianjin Zhonglian) are eligible for a separate rate and that 21 companies had no shipments.

DATES: Applicable March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Joshua Simonidis, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0608.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on May 11, 2021.[1] On June 10, 2021, we received timely case briefs from Mid Continent Steel & Wire, Inc. (the petitioner) and Paslode Fasteners (Shanghai) Co., Ltd. (Paslode).[2] We received no rebuttal briefs. On August 12, 2021, Commerce extended the deadline of the final results of this administrative review by 62 days, until November 9, 2021.[3] On November 2, 2021, Commerce further extended the deadline of the final results of this administrative review by 115 days until March 4, 2022.[4]

Scope of the Order [5]

The merchandise covered by the *Order* is nails from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 25841 (May 11, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Petitioner's Letter, ''Case Brief,'' dated June 10, 2021; *see also* Paslode's Letter, ''Case Brief of Paslode,'' dated June 10, 2021.

[3] *See* Memorandum, ''Extension of Deadline for Final Results of 2019–2020 Antidumping Duty Administrative Review,'' dated August 12, 2021.

[4] *See* Memorandum, ''Extension of Deadline for Final Results of 2019–2020 Antidumping Administrative Review,'' dated November 2, 2021.

[5] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China,* 73 FR 44961(August 1, 2008) (*Order*); *see also Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 49508 (September 20, 2019).

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* entries of nails produced and exported by Paslode are excluded from the *Order* and not subject to a cash deposit. Therefore, we will no longer include Paslode as part of the China-wide entity with respect to these entries.[7] However, entries of nails exported, but not produced, by Paslode, if any, remain subject to the review and are subject to the China-wide rate. This has been clarified in Appendix II.

We revised the separate rate applied to Shanghai Curvet and Tianjin Zhonglian to reflect the separate rate established in the most recently completed review segment of this proceeding, *i.e.,* 22.91 percent.[8]

Separate Rate Respondents

In the *Preliminary Results,* Commerce determined that Shanghai Curvet and Tianjin Zhonglian demonstrated their eligibility for a separate rate.[9] We received no comments or arguments since the issuance of the *Preliminary Results* that provide a basis for reconsideration of these determinations. Accordingly, Commerce is assigning Shanghai Curvet and Tianjin Zhonglian the most recent previous separate rate of 22.95 percent as its ''reasonable method'' to derive the separate rate pursuant to section 735(c)(5)(B) of the Act.[10]

China-Wide Entity

In the *Preliminary Results,* Commerce preliminarily determined that Qingdao D&L and Shanghai Yueda had not established their eligibility for a separate rate.[11] Moreover, Commerce preliminarily determined that 427 other companies for which a review was initiated did not establish their eligibility for a separate rate because they failed to provide a separate rate application, a separate rate certification, or a no-shipment certification if they were already eligible for a separate rate.[12] As such, we preliminarily determined that Qingdao D&L and Shanghai Yueda and these 427 companies are part of the China-wide entity.[13] For these final results, we find that the 429 companies, including Qingdao D&L and Shanghai Yueda, identified in Appendix II to this notice are part of the China-wide entity. However, as noted above, Commerce no longer considers Paslode part of the China-wide entity with respect to subject merchandise it both produces and exports.[14]

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[15] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity.[16] Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review and the China-wide entity's rate (*i.e.,* 118.04 percent) is not subject to change as a result of this review.[17]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that 21 companies had no shipments during the POR.[18] We received no arguments identifying information that contradicts this determination. Therefore, we continue to find that these companies had no shipments of subject merchandise to the United States during the POR and will issue appropriate liquidation instructions.[19]

Final Results of the Administrative Review

As a result of this administrative review, Commerce determines that the following weighted-average dumping margins exist for the period August 1, 2019, to July 31, 2020:

Exporter	Estimated weighted-average dumping margin (percent)
Shanghai Curvet Hardware Products Co., Ltd	22.91
Tianjin Zhonglian Metals Ware Co., Ltd	22.91

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). We will instruct CBP to apply an *ad valorem* assessment rate of 118.04 percent to all entries of subject merchandise during the POR which were exported by the 429 companies, including Qingdao D&L and Shanghai Yueda, in the China-wide entity.[20] In addition, we will instruct CBP to assess any suspended entries of subject merchandise associated with the companies listed in the ''Final Determination of No Shipments'' section above at the China-wide rate. For Shanghai Curvet and Tianjin

[7] *Id.* at Comment 1.

[8] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 33219 (June 24, 2021); *see also* Issues and Decision Memorandum at Comment 2.

[9] *See Preliminary Results,* 86 FR at 25843.

[10] *See* Issues and Decision Memorandum at Comment 2.

[11] *See Preliminary Results* PDM at 4–5.

[12] *See* Appendix II of this notice which identifies these 427 companies along with Qingdao D&L and Shanghai Yueda.

[13] *See Preliminary Results* PDM at 4–5.

[14] *See* Issues and Decision Memorandum at Comment 1.

[15] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[16] *Id.*

[17] *See Order.*

[18] These companies are: (1) Astrotech Steels Private Limited; (2) Dezhou Hualude Hardware Products Co., Ltd.; (3) Geekay Wires Limited; (4) Hebei Minmetals Co., Ltd.; (5) Mingguang Ruifeng Hardware Products Co., Ltd.; (6) Nanjing Caiqing Hardware Co., Ltd.; (7) Nanjing Yuechang Hardware Co., Ltd.; (8) Region Industries Co., Ltd.; (9) Region System Sdn. Bhd; (10) Schenker China Ltd Chengdu Branch; (11) Schenker China Ltd.; (12) SDC International Aust. Pty. Ltd.; (13) Shandong Qingyun Hongyi Hardware Products Co., Ltd.; (14) Shanxi Hairui Trade Co., Ltd.; (15) Shanxi Pioneer Hardware Industrial Co., Ltd.; (16) Shanxi Yuci Broad Wire Products Co., Ltd.; (17) S-Mart (Tianjin) Technology Development Co., Ltd.; (18) Suntec Industries Co., Ltd.; (19) Tianjin Jinchi Metal Products Co., Ltd.; (20) Tianjin Jinghai County Hongli Industry & Business Co., Ltd.; and (21) Xi'an Metals & Minerals Import & Export Co., Ltd. *See Preliminary Results,* 86 FR at 25842.

[19] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[20] Paslode was inadvertently included in the China-wide entity in the *Preliminary Results* of this review without clarification. As indicated in the ''Changes Since the Preliminary Results'' section above, any entries of subject merchandise produced and exported by Paslode are not subject to review. However, any entries of subject merchandise exported but not produced by Paslode are subject to review and will be assessed at the China-wide rate.

Zhonglian, we will assign an assessment rate of 22.91 percent as described in the ''Separate Rate Respondents'' section above.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For each company listed in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin listed for the exporter in the table; (2) for a previously examined Chinese and non-Chinese exporter not listed above that received a separate rate in a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 118.04 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. We also note that entries of subject merchandise produced and exported by Paslode Fasteners (Shanghai) Co., Ltd. are excluded from the *Order,* and are not subject to a cash deposit.[21]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(5).

Dated: March 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

List of Companies Determined To Be Part of the China-Wide Entity

1. ARaymond Automotive Fasteners
2. Achbest Company Ltd.
3. Air Tiger Express (Asia) Inc.
4. A-Jax Enterprises Ltd.
5. Alfa Marine (Shanghai) Co., Ltd
6. Alltrade Pacific Co., Ltd.
7. Am Global Shipping Lines Co., Ltd.
8. American Ocean Maritime Inc.
9. Apex Maritime (Ningbo) Co., Ltd.
10. Aplix Shanghai Fasteners
11. Arvid Nilsson Logistics & Trade (Shanghai) Co., Ltd
12. Auto Way Wuxi Casting Industry Co.
13. Beijing Catic Industry Limited
14. Beijing Century Joyo Courier Service
15. Beijing Jinheung Co., Ltd
16. Beijing Kang Jie Kong International Cargo Agent Co., Ltd.
17. Beijing MMCC Ltd.
18. Bollore Logistics China Co., Ltd Nanjing Branch
19. Bollore Logistics China Co., Ltd Tianjin Branch
20. Bonuts Hardware Logistics
21. Brilliant Group Logistics Corp.
22. Brilliant Logistics Group Inc.
23. C.H. Robinson Freight Services (China)
24. C.H. Robinson Freight Services China Ltd. Ningbo Branch
25. Caesar Shipping Logistics Co., Ltd.
26. Cana (Rizhao) Hardware Co., Ltd.
27. Cangzhou Xinqiao International Trade Co., Ltd.
28. Cargo Services (Tianjin) Co., Ltd.
29. Carotrans
30. Cas International Co., Ltd
31. Casia Global Logistics Company Ltd.
32. Certified Products International Inc.
33. Cheng Ch International Co., Ltd.
34. China International Freight (China) Ltd. Tianjin Branch
35. China International Freight Co., Ltd.
36. China Mast Forwarders Co., Ltd.
37. China Sea Marine Co., Ltd
38. Chinatrans International Limited
39. Chinatrans International Limited (China) Ltd. Tianjin Branch
40. City Ocean Logistics Co., Ltd.
41. Clearfreight Shanghai Limited
42. CN Worldwide International Freight Forwarding (Shanghai) Ltd.
43. Cosco International Freight Company
44. CRSA Global Logistics (Shanghai) Co.
45. CTS International Logistics Corporation Limited
46. D&F Material Products Ltd.
47. Daejin Steel Co., Ltd.
48. Dalian Dragon Star Imp. & Exp. Co., Ltd
49. Dalian Wanxiang International Trade Co., Ltd
50. Damco China Limited (Dongguan Forta Electronics Co., Ltd.)
51. Damco China Limited Ningbo Branch
52. Damco China Limited Qingdao Branch
53. Damco China Limited Shenzhen Branch
54. Damco Shenzhen
55. De Fasteners Inc.
56. DHL Global Forwarding (China) Co., Ltd. Tianjin Branch
57. Doublemoon Hardware Company Ltd
58. Dsv Air & Sea Co., Ltd (Tianjin)
59. Dynamic Network Container Line Ltd
60. E Cargoway Logistics Co., Ltd.
61. Eastrong International Logistics Co.
62. Eclat Int'l Co., Ltd.
63. Eco-Friendly Floor Ltd.
64. ECO System Corporation
65. Ejen Brothers Limited
66. ELG Logistic
67. Essentra Plastic Products Ningbo Co.
68. Eternity Int'l Freight Forwarder
69. E-Top Shipping Co., Ltd
70. Eumex Line Shenzhen Limited
71. Evergreen Global
72. Everscene Logistics Company Limited
73. Everstar Logistics Co., Ltd.
74. Fastgrow International Co., Inc.
75. Fastic Shipping Co., Ltd.
76. Fedex International Freight
77. Forest Shipping International Ltd.
78. Foshan Hosontool Development Hardware

[21] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China,* 73 FR 44961 (August 1, 2008); *see also* Appendix II.

79. Fourever International Limited
80. Gem-Duo Co., Ltd.
81. Gem-Year Industrial Co., Ltd.
82. Global Link (Shanghai) Co., Ltd.
83. Glori-Industry Hongkong Incorporation
84. Grandpac Aviation Shanghai Co. Ltd.
85. GTG Logistics Co., Ltd (Tianjin Branch)
86. Guangdong Meite Mechanical Co., Ltd.
87. Guangzhou Caixuan Cosmetics Co., Ltd.
88. Guangzhou Feixing Trading Co., Ltd.
89. Guangzhou Guanhong Cosmetics
90. Guangzhou Unigel Nails Syst
91. H&H International Forwarders Co., Ltd.
92. Haiyan Sanhuan Fasteners Co., Ltd.
93. Haiyan Yuanyang Standard Piece Co., Ltd.
94. Hangzhou Jiefa Materials Co., Ltd
95. Hebei Airsea Logistics Ltd.
96. Hebei Cangzhou New Century Foreign Trade Co., Ltd.
97. Hebei Chunghwa Star International Trading Company Limited
98. Hebei Five-Star Metal Products Co., Ltd.
99. Hebei Metal Trading Co., Ltd.
100. Hebei Minghao Import &Export Co., Ltd
101. Hebei Tianfeng Metal Products Co., Ltd
102. Hecny Shipping Limited
103. Hecny Transportation (Shanghai) Ltd.
104. Hengtuo Metal Products Co., Ltd
105. Hong Kong Yu Xi Co., Ltd.
106. Honour Lane Shipping Limited
107. Honour Lane Shipping Ltd Ningbo Branch
108. Honour Lane Shipping Ltd Qingdao Branch
109. Honour Lane Shipping Ltd. Tianjin Branch
110. Hualin Hydraulic Nantong Co., Ltd.
111. Hualin Ltd.
112. Huanghua Rc Business Co., Ltd
113. Huanghua Yingjin Hardware Products
114. Huiwen Jiahe (Shandong) Trading Co., Ltd.
115. Huzhou Jiehui Import And Export Co.
116. IFI & Morgan Ltd.
117. Interglobo International Freight Co., Ltd.
118. J.Y. Logistics Co., Ltd.
119. Jade Shuttle Enterprise Co., Ltd.
120. JCD Group Company Limited
121. Jeter Shipping Guangzhou Limited
122. Jiangsu Cheda Auto Accessories Co., Ltd.
123. Jiangsu Globe Logistics Ltd., Co.
124. Jiangsu Globe Logistics Ltd., Co., Tianjin Branch
125. Jiangsu Soho Honry Import & Export Co.
126. Jiarong Enterprises Co., Ltd.
127. Jiaxing Haijin Hardware Technology
128. Jiaxing Innofast Trading Co., Ltd.
129. Jiaxing Port Lixin Fasteners Co., Ltd
130. Jiaxing TSR Hardware Inc.
131. Jiele Construction Materials
132. Jinan High Strength Standard Pa Co., Ltd.
133. Jinan Jinbao Plastic Co., Ltd.
134. Jinan Zhongchuan Equipment Co., Ltd.
135. Jinhai Hardware Co., Ltd.
136. Jinheung Steel Corporation
137. Jinsco International Corp.
138. Jushiqiangsen (Tianjin)International
139. K-Apex International Freight (Ningbo) Co., Ltd.
140. K-Apex Logistics (Nanjing) Co., Ltd.
141. K-Apex Logistics (Qingdao) Co., Ltd.
142. K-Apex Logistics (Shanghai) Co., Ltd
143. K-Apex Logistics (Tianjin) Co., Ltd.
144. King Freight International Corp.
145. Kingshadow Co., Limited
146. Kingteam Precision Technology Co., Ltd.
147. Kintetsu World Express (China) Co.
148. Koram Inc.
149. Koram Steel Co., Ltd.
150. Korea Wire Co., Ltd.
151. Ko's Nail Incorporation
152. Kuehne & Nagel Ltd
153. Kuehne & Nagel Ltd Ningbo Branch Office
154. Kuehne & Nagel Ltd Tianjin Branch
155. Kuraray Magictape Shanghai Co., Ltd.
156. Lf Logistics (China) Co., Ltd.
157. Li Ya Xuan Furniture Factory
158. Liangmei Furniture Factory
159. Linkswork Logistics Limited
160. Linqing Huawei Bearing Co., Ltd.
161. Linyi Andi Supply Chain Co., Ltd.
162. Linyi Compass Supply Chain Co., Ltd
163. Linyi Flying Arrow Imp. & Exp. Co., Ltd.
164. Linyi Jianchengde Metal Hardware Co.
165. Linyi Vega Trading Co., Ltd.
166. Linyi Wan Gong Industry & Trade Co., Ltd.
167. Lishui Hongda Industry Co., Ltd
168. M+R Forwarding (China) Ltd.
169. M+R Forwarding (China) Ltd. Tianjin
170. Madison Shanghai Trading Co., Ltd.
171. Mallory Alexander (Asia Pacific)
172. Master International Logistics China Co., Ltd.
173. Maxwide Logistics Inc.
174. MB Logistics International Cn Ltd.
175. Mingguang Abundant Hardware Products Co., Ltd.
176. Morito Scovill HK Co., Ltd.
177. Nailtech Co., Ltd.
178. Nanjing North Star Intl Freight Forwarder Co., Ltd.
179. Nanjing Nuochun Hardware Co., Ltd.
180. Nanjing Toua Hardware & Tools Co., Ltd.
181. Neptune Shipping Limited
182. New Chain Logistics Co., Ltd
183. New Line Industry Company Limited
184. New Pole Power System Co Ltd
185. Nightingale Global Co., Ltd
186. Ningbo Beilun Xiangzi Imp&Exp Co., Ltd.
187. Ningbo Cosmos International Logistics
188. Ningbo Echoes International Trading Co., Ltd.
189. Ningbo Etdz Holdings Ltd
190. Ningbo Giftyland Co., Limited
191. Ningbo Haishu Ling Lang Trade Co., L
192. Ningbo Haitian Holding Group Co., Ltd.
193. Ningbo Hyderon Hardware Co., Ltd
194. Ningbo Kaili International Trading
195. Ningbo Kan Grow Bags Co., Ltd
196. Ningbo Langyi Metal Products Co., Ltd.
197. Ningbo Nd Imp. & Exp., Co., Ltd.
198. Ningbo Panxiang Imp & Exp Co., Ltd.
199. Ningbo Port Southeast Logistics Gro
200. Ningbo Shixun Import & Export Co., Ltd.
201. Ningbo Skycan Mold Manufacturing Ltd.
202. Ningbo Tianqi Ecommerce Co Ltd
203. Ningbo Truepower Import & Export Co., Ltd.
204. Ningbo United Group Import & Export Co., Ltd.
205. Ningbo Wepartner Import & Export Company Limited
206. Ningbo Winjoy Intl Trading Co.
207. Ningbo Winpex Imp & Exp Co., Ltd.
208. Ningbo Yanyi Trade Co., Ltd.
209. Ningbo Yinzhou Angelstar (International Trading) Co., Ltd.
210. Ningbo Yinzhou Wintie Auto Parts Co.
211. Ningbo Zhenda Stationery Co., Ltd.
212. Ninghai Rayguang Horsemanship Products Co., Ltd
213. Ocean Industrial Co., Limited
214. Ocean King Industries Limited
215. OEC Logistics (Qingdao) Co., Ltd
216. OEC Logistics (Qingdao) Co., Ltd, Tianjin Branch
217. OEC Logistics (Qingdao) Co., Ltd. (Dalian Branch).
218. One Touch Share Co., Limited
219. Ong Ming Enterprise Co., Ltd.
220. OOCL Logistics (China) Limited
221. Orient Express Container Co., Ltd
222. Orient Express Container Co., Ltd. Shenzhen Branch
223. Orient Star Transport International
224. Oriental Air Transport Service Inc.
225. Oriental Logistics Group Ltd.
226. Pacific Link International Freight
227. Pacific Star Express (China) Co., Ltd.
228. Packcraft Co., Ltd.
229. Panalpina World Transport (Prc) Ltd
230. Pantos Logistics (China) Co., Ltd
231. Parisi Grand Smooth Logistics Ltd.
232. Paslode Fasteners (Shanghai) Co., Ltd.[22]
233. Patek Tool Co., Ltd.
234. Peaksight (Shanghai) Technologies
235. Pem China Co., Ltd.
236. Penavico International Logistics, Co., Ltd.
237. Pennengineering Automotive Fasteners Kunshan Co., Ltd.
238. Pilot Logistics China Co., Ltd.
239. Pino Industry Co., Ltd.
240. Prime Shipping International, Inc.
241. Pro-Team Coil Nail Enterprise Inc.
242. Prym Consumer Ningbo Trading Limited
243. Pudong Prime International Logistics, Inc
244. Pudong Prime Int'l Logistics, Inc. (Qingdao Branch)
245. Qifeng Precision Industry Sci-Tech Corp.
246. Qingdao Ant Hardware Manufacturing Co., Ltd.
247. Qingdao Cheshire Trading Co., Ltd.
248. Qingdao D&L Group Ltd.
249. Qingdao Gold Dragon Co., Ltd.
250. Qingdao Grand Intl Co., Ltd.
251. Qingdao Hailifeng Rigging Co., Ltd
252. Qingdao Hongyuan Nail Industy Co., Ltd.
253. Qingdao JCD Machinery Co., Ltd.
254. Qingdao Jisco Co., Ltd.
255. Qingdao Kinghood Tools Co., Ltd
256. Qingdao Meijialucky Industry & Commerce Co., Ltd.
257. Qingdao Mst Industry & Commerce Co.
258. Qingdao Powerful Machinery Co., Ltd.
259. Qingdao Qinhang International
260. Qingdao Shantron International
261. Qingdao Shenghengtong Metal Products

[22] Entries of the subject merchandise produced and exported by Paslode Fasteners (Shanghai) Co., Ltd. are excluded from the *Order*. However, in our instructions to CBP, we will direct that subject merchandise exported by Paslode Fasteners (Shanghai) Co., Ltd. but produced by any other company is subject to the China-wide entity rate. *See* Issues and Decision Memorandum at Comment 1 for further discussion.

Co., Ltd
262. Qingdao Sun Star International
263. Qingdao Tansky International, Ltd.
264. Qingdao Tianshi Logistics Co., Limited
265. Qinhuangdao Ampac Building Products
266. Quick Advance Inc.
267. RMB Fasteners Limited Shanghai Rep. Office
268. Robertson Inc. (Jiaxing)
269. Rohlig China Limited Shanghai Branch
270. Romp Coil Nail Industries Inc.
271. Safround Logistic Co., Ltd
272. Scanwell Container Line Ltd
273. Seamaster Global Forwarding (China) Limited Tianjin Branch
274. Seamaster Global Forwarding (Shanghai)
275. Seasky Logistics Co. Ltd.
276. Shandong Dinglong Import & Export Co., Ltd.
277. Shandong Guomei Industry Co., Ltd
278. Shandong Intco Recycling Resources Co., Ltd.
279. Shandong Kangrong International
280. Shandong Tengda Fasten Tech. Co.
281. Shanghai Ai Lian International Trade Co., Ltd.
282. Shanghai Amass Freight International
283. Shanghai Autocraft Co., Ltd
284. Shanghai Ba-Shi Yuexin Logistics Development Co., Ltd.
285. Shanghai Cedargreen Imp & Exp Co., Ltd
286. Shanghai Danube International Logistics Co., Ltd.
287. Shanghai E-Sky Transportation Co., Ltd
288. Shanghai Finigate Integrated Logistics
289. Shanghai Goldenbridge International
290. Shanghai Goro Conveyor System Components Co Ltd
291. Shanghai Grand Sound International Transportation Co., Ltd
292. Shanghai Hu Nan Foreign
293. Shanghai Hualin Co., Ltd
294. Shanghai International Trade Transportation Co., Ltd.
295. Shanghai Jade Shuttle Hardware Tools Co. Ltd.
296. Shanghai Kaijun Logistics Co., Ltd. (Shenzhen Branch)
297. Shanghai Kaijun Logistics Co. Ltd.
298. Shanghai Landa International Trade Co., Ltd.
299. Shanghai Lead Trans International Ltd.
300. Shanghai March Import Export Company Ltd.
301. Shanghai Nanshi Foreign Economic Co.
302. Shanghai Nanshi Foreign Economic Cooperation Trading Company Ltd.
303. Shanghai Overseas Imp. & Exp Co., Ltd
304. Shanghai Pudong Int'l Transportation
305. Shanghai Seti Enterprise Int'l Co. Ltd.
306. Shanghai Shenda Imp. & Exp. Co., Ltd
307. Shanghai Solex Express Inc.
308. Shanghai Speedier Logistics Co., Ltd
309. Shanghai Sutek Industries Co., Ltd.
310. Shanghai Television & Electronics Import & Export Co., Ltd.
311. Shanghai Textile Raw Materials Co., Ltd.
312. Shanghai Tianshi Logistics Co., Ltd
313. Shanghai Worldtrans Logistics Services Limited
314. Shanghai Xuanming International
315. Shanghai Yueda Nails Industry Co., Ltd., a.k.a. Shanghai Yueda Nails Co.
316. Shantou Wanli Biotechnology Co., Ltd.
317. Shanxi Tianli Industries Co., Ltd
318. Shaoxing Bohui Import & Export Co., Ltd.
319. Shaoxing Chengye Metal Producing Co. Ltd.
320. Sheenbow Pigment Technology Co., Ltd
321. Shenzhen Baoyuanxin Trading Co., Ltd.
322. Shenzhen Lucky Logistics Ltd
323. Shenzhen Lucky Logistics Ltd. Guangzhou Branch
324. Shenzhen Pacific-Net Logistics Inc.
325. Shenzhen Pacific-Net Logistics Inc. Shanghai Branch
326. Shenzhen Sea Aerosol Co., Ltd.
327. Shenzhen Sunray Technology Co., Ltd.
328. Shenzhen Xinda Tongyuan Trading Co., Ltd.
329. Shenzhen Xinjintai Hardware Co., Ltd.
330. Shenzhen Yibai Network Technology
331. Shenzhen Zbao Logistics Company Limited
332. Shijiazhuang North Ornamental Casting Products Limited Company
333. Shijiazhuang Shuangming Trade Co., Ltd.
334. Shine International Transportation Ltd.
335. Shipco Transport (Shanghai) Ltd., Shen Zhen Branch
336. Shye Chang Ningbo Precision Electronic Co. Ltd
337. Sino Connections Logistics Inc.
338. Sunwell Industries Co., Ltd
339. Suzhou Jinyuan Fastener Co., Ltd
340. Suzhou Lantai Hardware Products
341. T.H.I. Group (Shanghai) Ltd.
342. Tag Fasteners Sdn Bhd
343. Tangshan Jikuang Mining Supplies Co.
344. Tengzhou Tri-Union Machinery Co. Ltd
345. Tian Heng Xiang Metal Products Co Ltd
346. Tianjin Baisheng Metal Products Co. Ltd.
347. Tianjin Coways Metal Products Co., Ltd
348. Tianjin Dagang Jingang Nail Factory
349. Tianjin Dongjiang Int'l. Shipping Exchange Market
350. Tianjin Free Trade Service Co Ltd
351. Tianjin High Wing International
352. Tianjin Hongli Qiangsheng Import & Export Co., Ltd.
353. Tianjin Huixinshangmao Co. Ltd.
354. Tianjin Hweschun Fasteners Manufacturing
355. Tianjin Jin Xin Sheng Long Metal Products Co., Ltd.
356. Tianjin Jinyifeng Hardware Co., Ltd
357. Tianjin Lianda Group Co. Ltd.
358. Tianjin Seungil Chem Tech Co., Ltd.
359. Tianjin Star Pet Tech Co., Ltd.
360. Tianjin Universal Machinery Imp. & Exp. Corporation
361. Tianjin Yinghua Arts & Crafts Co., Ltd.
362. Tianjin Zhonglian Times Technology Co., Ltd.
363. Tianshi Logistics Co., Limited
364. Titan ITM (Tianjin) Co, Ltd
365. Toll Global Forwarding (Hong Kong)
366. Topocean Consolidation Service (China) Ltd.
367. Topocean Consolidation Service (China) Ltd. Tianjin Branch
368. Topocean Consolidation Service (China) Ltd., Qingdao Branch
369. Total Glory Logistics Co., Ltd.
370. Trans Knights Inc.
371. Trans Knights Int'l Logistics (Shanghai) Co., Ltd.
372. Trans Wagon International China Co., Ltd.
373. Translink Shipping Inc.
374. Translink Shipping Inc Nanjing Branch
375. Translink Shipping Inc., Xiamen Branch
376. Translink Shipping Inc-Qingdao
377. Translink Shipping Lines—Ningbo (China) Co., Ltd.
378. Trans-Union International Logistics
379. Transwell Logistics Co., Ltd.
380. Triumph Link Logistics Limited
381. TTI Freight Forwarder Company Limited
382. U.S. United Logistics (Ningbo) Inc.
383. UBI Logistics (China) Limited
384. Unicorn Fasteners Co., Ltd.
385. Unique Logistics International (H.K.) Ltd.
386. UPS SCS (China) Co., Ltd. Jiangsu
387. UPS SCS (China) Co., Ltd Ningbo
388. Walkbase Rubber Products Co., Ltd.
389. Waxman Technology China Limited
390. Weida Freight System Co., Ltd
391. Weifang Wenhe Pneumatic Tools Co. Ltd
392. Whale Logistics (Shanghai) Company
393. World Jaguar Logistics, Inc.
394. Worldwide Logistics Co., Ltd.
395. Wuhu Diamond Metal Products Co., Ltd
396. Wulian Zhanpeng Metals Co
397. Wuxi Phoenix Artist Materials Co., Ltd.
398. Xiamen Greating Logistics Company Ltd
399. Xiamen Jianming Rising Import & Exp
400. Xiamen Universe Solar Technology Co Ltd
401. Xinchang Xinchai Machinery Co., Ltd.
402. Suzhou Xingya Nail Co., Ltd.
403. Senco-Xingya Metal Products (Taicang) Co., Ltd.
404. Hong Kong Yu Xi Co., Ltd.
405. Omnifast Inc.
406. CIP International Group Co, Ltd.
407. Yangzhou Tongxie Weaving Co Ltd
408. Beijing Kang Jie Kong Int'l Cargo Ag
409. Youngwoo (Cangzhou) Fasteners Co., Ltd.
410. Yusen Logistics (Shenzhen) Co., Ltd
411. Zhangjiagang Bo Hong Trade Co., Ltd.
412. Zhangjiagang Bolnut Trade Co., Ltd.
413. Zhangjiagang Chenjun Trade Co., Ltd.
414. Zhangjiagang Double-Whale Bags Mfg
415. Zhangjiagang Lianfeng Metals Products Co. Ltd.
416. Zhangjiagang Longxiang Industries Co. Ltd.
417. Zhaoqing Harvest Nails Co., Ltd
418. Zhejiang Focus-On Imp. Exp. Co.,
419. Zhejiang Hatehui Technology Co., Ltd
420. Zhejiang Hengyi Science & Technology
421. Zhejiang Huantai Precision Machinery Co., Ltd.
422. Zhejiang Laibao Precision Technology
423. Zhejiang Longquan Foreign Trade Co., Ltd.
424. Zhejiang Milestone Fastener Manufacturing Co., Ltd.
425. Zhejiang Rongpeng Imp & Exp Co., Ltd.
426. Zhejiang Sanlin Metals Products Co.
427. Zhejiang Yiwu Yongzhou Imp. & Exp. Co., Ltd
428. Zhejiang Yongzhu Casting Technology Co., Ltd.
429. Zhongge International Trading Co.

[FR Doc. 2022–05009 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–137; C–570–138]

Pentafluoroethane (R–125) From the People's Republic of China: Antidumping and Countervailing Duty Orders; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published in the **Federal Register** on March 3, 2022, the antidumping duty (AD) and countervailing duty (CVD) orders of pentafluoroethane (R–125) from the People's Republic of China (China). This notice incorrectly listed the applicable subsidy rates for the companies covered by the CVD order.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6174.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 3, 2022, in FR Doc 2022–04505, on page 12082, in the table in the third column, correct the subsidy rate (percent) listed for companies covered by the R–125 CVD order to be as follows: 306.57 percent for Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd., Daikin Fluorochemicals (China) Co., Ltd., Hongkong Richmax Ltd., and Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.; 14.66 percent for Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd.; 12.75 percent for Zhejiang Sanmei Chemical Ind. Co., Ltd.; and 14.43 percent for ''All Others.''

Background

On March 3, 2022, Commerce published in the **Federal Register** the AD and CVD orders on R–125 from China.[1] We incorrectly listed the applicable subsidy rates for the companies covered by the CVD order due to a typographical error. The corrected subsidy rates are as follows:

Company	Subsidy rate (percent)
Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd	306.57
Daikin Fluorochemicals (China) Co., Ltd	306.57
Hongkong Richmax Ltd	306.57
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd	306.57
Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd[2]	14.66
Zhejiang Sanmei Chemical Ind. Co., Ltd[3]	12.75
All Others	14.43

We hereby notify the public in this notice that we should have identified the subsidy rates listed above for the companies covered by the CVD order. We intend to notify U.S. Customs and Border Protection of this correction.

Notification to Interested Parties

This notice is issued and published in accordance with section 706(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.211(b).

Dated: March 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–04946 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB864]

Marine Mammals; File No. 26288

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Deborah Giles, Ph.D., Wild Orca, 6523 California Ave. SW, #172, Seattle, Washington 98136, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before April 8, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26288 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26288 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Ph.D., or Shasta McClenahan, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The proposed permit would authorize vessel surveys for continuing a long-term assessment of the health and ecology of cetaceans, with particular focus on the ESA-listed Southern Resident killer whales, and sympatric ecotypes of killer whales (*Orcinus orca*), with the primary goal of obtaining health information pertinent to their management and conservation. The core study area is the Salish Sea, covering the eastern inlet of the Strait of Juan de Fuca, Puget Sound to the south, the U.S. boundary to the north, and the mainland to the east, but includes the outer coast from Washington State to Monterey California. Research methods primarily involve fecal sampling, photographic identification, and behavioral observations, but depending on the conditions and behavior of the whales we may also use other non-invasive or benign techniques such as prey and skin sampling in the trail of whales, unmanned aircraft remote observations of fecal patches and whales, and eDNA water sampling. Parts from unidentified ESA-listed fish (*e.g.,* salmonid) species may also be collected during predation events. Secondary target species that may be

[1] *See Pentafluoroethane (R–125) from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 87 FR 12081 (March 3, 2022).

[2] Commerce has found the following companies to be cross owned with Zhejiang Quzhou Juxin Flourine Chemical Co., Ltd.: Juhua Group Corporation; Zhejiang Juhua Co., Ltd.; Ningbo Juhua Chemical & Science Co., Ltd.; Zhejiang Quzhou Fluoxin Chemicals Co., Ltd.; and Zhejiang Juhua Chemical Mining Co., Ltd.

[3] Commerce has found the following company to be cross owned with Zhejiang Sanmei Chemical Ind. Co., Ltd: Fujian Qingliu Dongying Chemical Ind. Co. Ltd.

approached include: Fin (*Balaenoptera physalus*), gray (*Eschrichtius robustus*), humpback (*Megaptera novaeangliae*), and minke (*Balaenoptera acutorostrata*) whales. Up to 21 additional cetacean species may be taken if opportunistically encountered (see permit take table). Up to 100 takes whales of each killer whale stock and up to 400 individuals of each of the other species may be taken annually. Five pinniped species may be unintentionally harassed during research activities. The permit would be for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 3, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–04927 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB853]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a one day in-person and virtual meeting (hybrid) of its Shrimp Advisory Panel (AP).

DATES: The meeting will convene Tuesday, March 29, 2022, 8:30 a.m. to 5 p.m., EST. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Those who prefer to attend the meeting in-person may do so at the Gulf Council office. If you are unable or do not wish to travel, you may participate in the meeting via webinar. Registration information will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the Shrimp AP meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; *matt.freeman@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, March 29, 2022; 8:30 a.m.–5 p.m. EST (7:30 a.m.–4 p.m. CST)

Meeting will begin with Adoption of Agenda, Approval of Minutes from December 7–8, 2021 meeting, and Scope of Work. The AP will review Council Actions in Response to Motions from the December 2021 Shrimp AP Meeting and January 2022 Council Meeting Motions.

The AP will receive updates on the Council Request for Proposal (RFP) to Address Expanded Sampling of the Fleet for Effort Monitoring in the Gulf Shrimp Industry and on the Plan for Pilot Testing of Vessel Monitoring System (VMS) Units on Gulf Shrimp Vessels, and then review the National Marine Fisheries Services' (NMFS) Evaluation of Draft Approval Specifications for Reinstituting Historical cELB Program.

The AP will review the Draft Shrimp Framework Action, followed by updates on the NMFS Shrimp Working Groups, on the development of brown and white shrimp empirical dynamic models (EDM) including related motions from the SSC Meeting in March 2022, and on the Gulf of Mexico Atlantis ecosystem model development and the intention to use the peer-reviewed model for shrimp simulations and strategic management advice.

The AP will review the 2020 Gulf Shrimp Fishery Effort and Landings and then receive an update on the Number of Active Gulf Shrimp Permits, Economic Estimates, Royal Red Landings, and 2020 Royal Red Index.

The AP will discuss the Biological Review of the Texas Closure and receive updates on Sea Turtle Take and TED Compliance and on the Publication of Gulf of Mexico Aquaculture Opportunity Areas' Notice of Intent.

Lastly, the AP will receive any public testimony and discuss other business items. Meeting Adjourns—

The in-person meeting will be broadcast via webinar. You may register by visiting *www.gulfcouncil.org* and clicking on the Shrimp Advisory Panel meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take-action to address the emergency at least 5 working days prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, *kathy.pereira@gulfcouncil.org,* at least 5 days prior to the meeting date.

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

Dated: March 4, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–05003 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB857]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of its Groundfish Management Team (GMT) to discuss items on the Pacific Council's April 2022 meeting agenda. This meeting is open to the public.

DATES: The online meeting will be held on Friday, March 25, 2022, from 1 p.m.

to 4 p.m., Pacific Daylight Time. The scheduled ending time for this GMT meeting is an estimate, the meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer, Pacific Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to prepare for the Pacific Council's April 2022 agenda items. The GMT will discuss items related to groundfish management and administrative matters on the Pacific Council's agenda. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: March 4, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–05004 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB869]

Research Track Assessment for Northern Shortfin Squid and Butterfish

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing northern shortfin squid and butterfish stocks. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from March 7, 2022–March 11, 2022. The meeting will conclude on March 11, 2022 at 6 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via WebEx.

Link: https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=m8a1062743b689f38d340622b4c9367ff.

Meeting number (access code): 2761 523 2146.

Meeting password: vNhr8Y75tBu.

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–257–1642; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about research track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/research-track-stock-assessments.*

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

MONDAY, MARCH 7, 2022

Time	Topic	Presenter(s)	Notes
12 p.m.–12:15 p.m	Welcome/Logistics Introductions/ Agenda/Conduct of Meeting.	Michele Traver, Assessment Process Lead. Russ Brown, PopDy Branch Chief.	
	Butterfish	Mike Wilberg, Panel Chair.	
12:15 p.m.–1:45 p.m	Terms of Reference (TORs) #1 and A1.	Charles Adams, Andrew Jones, Jason Didden, Tori Kentner.	Life history Catch Spatial Distribution Industry Perspective and Outreach Aging.
1:45 p.m.–3 p.m.	TORs #2 and A2	Charles Adams, Laurel Smith, Rob Vincent.	Survey Data Consumptive Removals.
3 p.m.–3:10 p.m	Break.		
3:10 p.m.–4:40 p.m	TOR #3	Charles Adams	F, R, SSB Productivity.
4:40 p.m.–5:30 p.m	TORs #4 and A1	Charles Adams, Laurel Smith	BRPs
5:30 p.m.–5:50 p.m	Discussion/Summary	Review Panel.	
5:50 p.m.–6 p.m	Public Comment	Public.	
6 p.m	Adjourn.		

TUESDAY, MARCH 8, 2022

Time	Topic	Presenter(s)	Notes
12 p.m.–12:10 p.m	Welcome/Logistics	Michele Traver, Assessment Process Lead Mike Wilberg, Panel Chair.	
12:10 p.m.–12:45 p.m	TORs #4 cont. and 5	Charles Adams	BRPs Stock Determination.
12:45 p.m.–1:45 p.m	TOR #6	Charles Adams	Projections.
1:45 p.m.–3:15 p.m	TORs #7 and 8	Charles Adams	Research Recommendations Alternative Approach.
3:15 p.m.–3:25 p.m	Break.		
3:25 p.m.—4:40 p.m	TOR #7 and 8 cont.	Charles Adams	Research Recommendations Alternative Approach.
4:40 p.m.–5 p.m	Discussion/Summary	Review Panel.	
5 p.m.–5:10 p.m	Public Comment	Public.	
5:10 p.m.–6 p.m	Wrap Up/Key Points on Butterfish	Review Panel.	
6 p.m	Adjourn.		

WEDNESDAY, MARCH 9, 2022

Time	Topic	Presenter(s)	Notes
12 p.m.–12:10 p.m	Welcome/Logistics	Michele Traver, Assessment Process Lead.	
	Illex	Mike Wilberg, Panel Chair.	
12:10 p.m.–2 p.m	TORs #1 and 2	Lisa Hendrickson, Brooke Lowman.	Landings and Discards Surveys and Fishery CPUE.
2 p.m.–2:50 p.m	TOR #3	Lisa Hendrickson, Jessica Jones	2019 age, size and maturity, trace element data.
2:50 p.m.–3 p.m	Break.		
3 p.m.–5 p.m	TORs # 4 and 5	Lisa Hendrickson, Sarah Salois, Paul Rago.	Fishery body size Environmental effects Stock size and Fishing mortality.
5 p.m.–5:20 p.m	Discussion/Summary	Review Panel.	
5:20 p.m.–5:30 p.m	Public Comment	Public.	
5:30 p.m.	Adjourn.		

THURSDAY, MARCH 10, 2022

Time	Topic	Presenter(s)	Notes
12 p.m.–12:10 p.m	Welcome/Logistics	Michele Traver, Assessment Process Lead Mike Wilberg, Panel Chair.	
12:10 p.m.–1:10 p.m	TOR #5 cont.	John Manderson	Stock size and Fishing mortality.
1:10 p.m.–2:10 p.m	TOR #6	Anna Mercer	In-season data.
2:10 p.m.–3:10 p.m	TORs #7–9	Lisa Hendrickson	BRP's Stock Status Projections.
3:10 p.m.–3:20 p.m	Break.		
3:20 p.m.–5:20 p.m	TORs #10 and 11	Lisa Hendrickson	Research Recommendations Alternative approach.
5:20 p.m.–5:40 p.m	Discussion/Summary	Review Panel.	
5:40 p.m.–5:50 p.m	Public Comment	Public.	
5:50 p.m.–6 p.m	Wrap Up/Key Points on *Illex*	Review Panel.	
6 p.m	Adjourn.		

FRIDAY, MARCH 11, 2022

Time	Topic	Presenter(s)	Notes
12 p.m.–6 p.m	Report Writing	Review Panel.	

The meeting is open to the public; however, during the 'Report Writing' session on Friday, March 11, 2022, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

Dated: March 4, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–04981 Filed 3–4–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB046

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish and Red Drum Fisheries of the Gulf of Mexico; Amendments 48/5

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

ACTION: Notice of availability; request for comments.

SUMMARY: Combined in a single document, the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council) has submitted Amendment 48 to the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico and Amendment 5 to the FMP for the Red Drum Fishery of the Gulf of Mexico (Amendments 48/5) for review, approval, and implementation by NMFS. Amendments 48/5 would establish or modify maximum sustainable yield (MSY) proxies, maximum fishing mortality thresholds (MFMTs), minimum stock size thresholds (MSSTs), and optimum yield (OY) for stocks in the Reef Fish and Red Drum FMPs. The need for this action is to have biological reference points that can be used for determining status of the stocks or stock complexes consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments on Amendments 48/5 must be received by May 9, 2022.

ADDRESSES: You may submit comments on Amendments 48/5 identified by ''NOAA–NMFS–2021–0023'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2021–0023'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendments 48/5 may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *http://sero.nmfs.noaa.gov.* Amendments 48/5 includes an environmental assessment and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires each regional fishery management council to submit any FMP or amendment to the FMP to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment to the plan, to publish an announcement in the **Federal Register** notifying the public that the FMP or amendment to the FMP is available for review and comment.

Amendments 48/5 were prepared by the Gulf Council and, if approved, would be incorporated into the management of Gulf reef fish and red drum through the respective FMPs.

Background

The Magnuson-Stevens Act and the National Standard 1 Guidelines require that FMPs specify a number of reference points for managed fish stocks, including maximum sustainable yield (MSY) or MSY proxy, and optimum yield, as well as status determination criteria (SDC), including an MFMT or an overfishing limit (OFL), and an MSST. These SDC represent the point at which a stock is determined to be overfished (*i.e.,* below MSST) or experiencing overfishing (*i.e.,* above MFMT or OFL). In 1999, the Gulf Council submitted the Generic Sustainable Fisheries Act (SFA) Amendment, which proposed definitions of MSY, OY, MFMT, and MSST for all reef fish stocks. NMFS approved most of the MFMT criteria, but disapproved all of the definitions for MSY, OY, and MSST because they were not based on biomass.

While NMFS refers to the document as ''Amendments 48/5'' in this notice of availability, each amendment applies separately to the stocks in the respective FMPs. Amendment 5 applies to the red drum stock. Amendment 48 applies to several reef fish stocks and stock complexes that either have not been assessed or were assessed but still require stock status determinations. These include: Cubera snapper, lane snapper, goliath grouper, the shallow-water grouper complex (scamp, black grouper, yellowmouth grouper, and yellowfin grouper), the deep-water grouper complex (yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind), the tilefish complex (golden tilefish, blueline tilefish, and goldface tilefish), the jacks complex (lesser amberjack, almaco jack, and banded rudderfish), and the mid-water snapper complex (wenchman, silk snapper, blackfin snapper, and queen snapper). Amendments 48/5 also addresses four reef fish stocks that have been assessed and have known stock status determinations: Hogfish, mutton snapper, yellowtail snapper, and black grouper. Amendment 43 to the Reef Fish FMP established references points and SDC for hogfish. However, OY for hogfish was not defined there and is addressed in Amendments 48/5. Mutton snapper, yellowtail snapper, and black grouper, which occur in both the Gulf Council and South Atlantic Fishery Management Council areas of jurisdiction but are managed separately under each Council's FMPs, have reference points and SDC specified in the South Atlantic Snapper-Grouper FMP, but not in the Gulf Reef Fish FMP. With respect to black grouper, that species is managed by the South Atlantic Council as a single stock but is managed by the Gulf Council as part of the shallow-water grouper complex.

Maximum Sustainable Yield

The MSY is the largest long-term average catch or yield that can be taken from a stock or stock complex under

prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.,* gear selectivity), and the distribution of catch among fleets. However, the actual MSY can rarely be estimated with certainty because of the difficulty in accurately estimating the relationship between the size of the spawning stock and the subsequent annual recruitment. As a result, proxies for MSY are typically used because they are easier to measure. Generally, MSY proxies used for fish species in the Gulf are based on some percentage of spawning potential ratio (SPR) and are expressed as the yield when fishing at F_{PROXY} (where F is fishing mortality rate). In using SPR, NMFS assumes that a certain amount of fish must survive and spawn in order to replenish the stock, thus SPR represents the average number of eggs per fish over its lifetime when the stock is fished, compared to the average number of eggs per fish over its lifetime when the stock is not fished. A sustainable SPR depends on the life history of the species, but in general, is between 20 percent and 40 percent for reef fish species. The advantage of using SPR as a proxy is that it requires less information to calculate than MSY.

For reef fish stocks and stock complexes with the exception of goliath grouper, the MSY proxy selected by the Gulf Council is the yield when fishing at $F_{30\%\ SPR}$. This is the proxy most commonly recommended by the Gulf Council's SSC for assessed reef fish stocks and the SSC recommended this MSY proxy for the reef fish stocks and stock complexes in Amendment 48. For goliath grouper, the Gulf Council selected a more conservative MSY proxy because this species is more vulnerable to overfishing because of its long life-span and slow growth rate. The goliath grouper MSY proxy is the yield when fishing at $F_{40\%\ SPR}$. The MSY proxies for goliath grouper, mutton snapper and yellowtail snapper are consistent with MSY proxy selected by the South Atlantic Council.

The harvest of red drum is prohibited in Federal waters, but fishing is allowed in state waters under management measures developed by the respective Gulf state marine fisheries agencies. These agencies manage the stock to achieve a 30 percent escapement rate from state to Federal waters. Thus, Amendments 48/5 would define the red drum MSY proxy as the yield that provides for an escapement rate of juvenile fish to the spawning stock biomass (SSB) equivalent to 30 percent of those that would have escaped had there been no inshore state-waters fishery.

Amendments 48/5 would also adopt a streamlined procedure for future specification of the MSY proxies for reef fish stocks and red drum. This procedure would allow the Gulf Council to adopt an MSY proxy recommended by the SSC by including a discussion of the change in a plan amendment. If the Council chooses to use this procedure, which would not include the consideration of alternatives to the MSY proxy recommended by the SSC, NMFS expects the Council to document its rationale for that decision. If more than one MSY proxy is supported by the best scientific information available, NMFS expects the Council to provide an appropriate analysis of these alternatives.

Maximum Fishing Mortality Thresholds

MFMT is the rate of fishing mortality above which a stock is experiencing overfishing. Overfishing can also be determined using the OFL, which is the annual amount of catch that corresponds to fishing at MFMT. Consistent with the Generic Annual Catch Limits and Accountability Amendment, NMFS uses the MFMT to determine overfishing for stocks or stock complexes that have stock assessments only in years in which a stock assessment is conducted. For other years, and for stocks or stock complexes without stock assessments, NMFS uses catch compared to the OFL to determine overfishing.

The Generic SFA Amendment set MFMT equal to $F_{50\%\ SPR}$ for goliath grouper, equal to $F_{30\%\ SPR}$ for red drum, and equal to $F_{30\%\ SPR}$ for all reef fish stocks except red snapper (MFMT = $F_{26\%\ SPR}$). To keep MFMT consistent with the proposed MSY proxies, Amendments 48/5 would set this threshold for the relevant stocks equal to the F at the MSY proxy for each stock or stock complex as discussed above.

Minimum Stock Size Thresholds

The MSST is a biomass reference point that measures how many fish are left in the water rather than how many fish are caught, and determines at what biomass level a stock or stock complex is overfished. The MSST can be specified in terms of pounds of fish, numbers of fish, or the expected egg production from the SSB of the adult stock. The long-term average size of a stock that results from harvesting at MSY is called the biomass at MSY (B_{MSY}). If the stock level falls below B_{MSY}, it cannot sustain harvest at the MSY level without further depletion. However, biomass may fluctuate over time because of changes in environmental conditions, recruitment to the stock, or other variables. Because of these natural fluctuations, the MSST is generally set at some level below B_{MSY}, but cannot be set lower than 50 percent of B_{MSY}. The greater the difference between B_{MSY} and MSST, the less likely a stock is to be declared overfished, but the more difficult it may be to rebuild the stock back to B_{MSY} should the stock size fall below MSST.

In Amendments 48/5 the Council considered several alternatives for MSST that would apply to all of the stocks and stock complexes for which the Council is also establishing MSY and MFMT. These alternatives ranged from $(1–M)*B_{MSY}$ (or proxy), where M is the natural mortality, to $0.50*B_{MSY}$ (or proxy), and the Council chose to set MSST for these stocks and stock complexes at $0.75*B_{MSY}$ (or proxy). This value is between the B_{MSY} (or proxy) stock level and the 50 percent of B_{MSY} (or proxy) level used by the Gulf Council for assessed reef fish stocks as defined in Amendment 44 to the Reef Fish FMP. The Gulf Council determined that this more conservative value is appropriate for the unassessed stocks and stock complexes addressed in Amendments 48/5. The Council also considered and selected an additional alternative that would apply only to those individual stocks that span both the South Atlantic and Gulf Councils' areas of jurisdiction and would set MSST consistent with the MSST specified by the South Atlantic Council. These stocks are goliath grouper, black grouper, mutton snapper, and yellowtail snapper. The MSST specified by the South Atlantic Council is $0.75*B_{MSY}$ (or proxy) for black grouper, mutton snapper, and yellowtail snapper, and $(1–M)*B_{MSY}$ (or proxy) for goliath grouper.

As discussed previously, and unlike the South Atlantic Council, the Gulf Council manages black grouper as part of the shallow water grouper complex, not as a single stock. Therefore, although black grouper was included in preferred alternative 5 that addressed the other three stocks that span both the South Atlantic and Gulf Councils' areas of jurisdiction, Amendment 48 does not consider specifying an MSY for black grouper as a single stock. Instead, consistent with the Gulf Council's current management of this stock, Amendment 48 would specify an MSY for the entire shallow-water grouper complex, which includes black grouper. NMFS invites specific comments on the part of Amendments 48/5 that proposes to specify MSST for black grouper as a single stock.

Optimum Yield

The Magnuson-Stevens Act and NS1 guidelines state that OY is based on MSY as reduced by relevant economic, social, or ecological factors. Additionally, the NS1 guidelines state that OY should include some consideration of uncertainty. If the estimates of MFMT and current biomass are known with a high level of certainty, and management controls can accurately limit catch, then OY could be set very close to MSY, assuming no other reductions are necessary for social, economic, or ecological factors. However, OY cannot exceed MSY. To the degree that such MSY estimates and management controls are lacking or unavailable, OY should be reduced farther from MSY.

For the assessed reef fish stocks that are not addressed in Amendments 48/5, the Gulf Council has defined OY as the yield from fishing at some percentage of F_{MSY} (or proxy). However, the NMFS Southeast Fisheries Science Center (SEFSC) staff and the Gulf Council's SSC have recommended against specifying OY as the yield at a certain value of F. They have suggested instead that OY be a percentage of MSY for three reasons: (1) If OY is specified as a percentage of F_{MSY} (or proxy), SEFSC staff would need to provide two sets of yield projections when running stock assessments (one for MSY and one for OY), adding complexity to the projections; (2) it is possible that the calculated long-term yield at the F_{OY} proxy could be greater than the calculated long-term yield at the F_{MSY} proxy, which would be inconsistent with the Magnuson-Stevens Act and NS1 guidelines; and (3) defining OY as a percent of MSY is more intuitive and easier to understand than using a percentage of the F_{MSY} proxy to define OY. Therefore, the Gulf Council proposes setting OY at 90 percent of the MSY or MSY proxy for all reef fish stocks addressed in Amendments 48/5 with the exception of goliath grouper.

For goliath grouper, the Council proposes using the ratio between the annual catch limit (ACL) and OFL to determine how much the OY should be reduced from the MSY. This relationship accounts for scientific and management uncertainty and would apply that knowledge to guide where OY should be set relative to MSY for this stock. Because possession of goliath grouper is prohibited, the OY value would be zero.

For red drum, the Gulf Council decided to keep the existing OY definition, which is based on a 1987 SEFSC stock assessment that concluded under certain escapement rates of juveniles, the stock could rebuild. This OY definition is: (1) All red drum commercially and recreationally harvested from Gulf state waters landed consistent with state laws and regulations under a goal of allowing 30 percent escapement of the juvenile population; and (2) all red drum commercially or recreationally harvested from the Primary Area (Louisiana, Mississippi, and Alabama) of the exclusive economic zone (EEZ) under the total allowable catch (TAC) level and allocations specified under the provisions of the Red Drum FMP, and a zero-retention level from the Secondary Areas (Florida and Texas) of the EEZ. The red drum TAC for the Gulf EEZ has been zero since 1988 with the implementation of Amendment 2 to the Red Drum FMP and harvest in the EEZ is prohibited (53 FR 34662; June 29, 1988). Therefore, to achieve the OY, the Gulf states have independently and cooperatively implemented red drum regulations to achieve a 30 percent or greater escapement rate to the spawning stocks for each year class.

Procedural Aspects of Amendments 48/5

The Council has submitted Amendments 48/5 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendments 48/5 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistency with the Magnuson-Stevens Act and other applicable laws, NMFS will publish a notice of agency decision in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendments 48/5. Because none of the measures included in the amendments involve regulatory changes, no proposed or final rule is required at this time. If approved, the provisions of Amendments 48/5 would not be specified in regulations but would be considered amendments to the respective FMPs.

Consideration of Public Comments

Comments on Amendments 48/5 must be received by May 9, 2022. Comments received during the comment period for this notice of availability will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendments 48/5. Comments received after the comment period will not be considered by NMFS in this decision. All comments received by NMFS during the comment period will be addressed in the notice of agency decision.

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

Dated: March 3, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–05010 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the meeting of the Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be Considered.

DATES: The meeting is scheduled for Wednesday, April 27, 2022, 9:30 a.m.–5:00 p.m. Eastern Daylight Time (EDT) and Thursday, April 28, 2022, 8:30 a.m.–12:15 p.m. Eastern Daylight Time (EDT). The time and the agenda topics described below are subject to change. For the latest agenda, please refer to the SAB website: *https://sab.noaa.gov/index.php/current-meetings/*.

ADDRESSES: The April 27 and 28, 2022 venue is to be determined; please check the website for the location. The link for the webinar registration for the April 27–28, 2022 meeting may be found here: *https://sab.noaa.gov/index.php/current-meetings/*.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 301–734–1156; Email: *Cynthia.Decker@noaa.gov*; or visit the SAB website at *https://sab.noaa.gov/index.php/current-meetings/*.

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information

services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Status: The April 27–28, 2022 meeting will be open to public participation with a 15-minute public comment period at 4:45 p.m. Eastern Daylight Time (EDT) on Wednesday, April 27, 2022. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the April 27–28, 2022 meeting should be received in the SAB Executive Director's Office by April 20, 2022 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after this date will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Special Accommodations: This meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to the Executive Director no later than 12 p.m. on April 20, 2022.

Matters to be Considered: The meeting on April 27–28 will include the (1) NOAA Update, (2) NOAA Science Update (3) Leadership in Coastal Resilience (4) NOAA Response to SAB Ecosystem Science and Management Working Group Report: Decision Making Under Deep Uncertainty, (5) Presentation and Discussion of SAB 2022 Work Plan Topics (6) NOAA Response to SAB Data Archiving and Access Requirements Working Group Report: Recommendations Concerning the NOAA Cloud Strategic Plan Actions and the NOAA Data Strategic Plan Actions (7) NOAA Response to SAB Climate Working Group Report: Advancing Earth System Prediction (8) NOAA Response to SAB Climate Working Group Report: Opportunity for COVID–19-related Earth System monitoring and prediction efforts as a result of worldwide shelter in place/stay at home policies (9) Review of the Draft 2022 Report to the United States Congress from the Environmental Information Services Working Group. Meeting materials, including work products, will be made available on the SAB website: *https://sab.noaa.gov/index.php/current-meetings/*.

Dave Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–04979 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB807]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 Discard Mortality Webinar I for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Discard Mortality Webinar I will be held Friday, March 25, 2022, from 10 a.m. to 12 p.m., Eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Discard Mortality Webinar I are as follows:

- Participants will review discard mortality information for use in the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: March 4, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–05002 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2022–0009]

Grant of Interim Extension of the Term of U.S. Patent No. 8,858,612; Reducer®

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting a one-year interim extension of the term of U.S. Patent No. 8,858,612.

FOR FURTHER INFORMATION CONTACT: Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at 571–272–0909 or by email to *ali.salimi@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On February 22, 2022, Neovasc Medical Ltd., the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of U.S. Patent No. 8,858,612. The patent claims methods of using a catheter delivered implantable device known by the tradename Reducer®. The application for patent term extension indicates that a Premarket Approval Application (PMA) P190035 was submitted to the Food and Drug Administration (FDA) on December 31, 2019.

Review of the patent term extension application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period will continue beyond the extended expiration date of the patent, March 27, 2022, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 8,858,612 is granted for a period of one year from the extended expiration date of the ’612 patent.

Robert Bahr,

Deputy Commissioner for Patents, United States Patent and Trademark Office.

[FR Doc. 2022–04969 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2022–0003]

Grant of Interim Extension of the Term of U.S. Patent No. 6,953,476; Reducer®

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting a one-year interim extension of the term of U.S. Patent No. 6,953,476.

FOR FURTHER INFORMATION CONTACT: Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at 571–272–0909 or by email to *ali.salimi@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On February 22, 2022, Neovasc Medical Ltd., the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of U.S. Patent No. 6,953,476. The patent claims a catheter delivered implantable device, Reducer®. The application for patent term extension indicates that a Premarket Approval Application (PMA) P190035 was submitted to the Food and Drug Administration (FDA) on December 31, 2019. Review of the patent term extension application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period will continue beyond the extended expiration date of the patent, March 27, 2022, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 6,953,476 is granted for a period of one year from the extended expiration date of the ’476 patent.

Robert Bahr,

Deputy Commissioner for Patents, United States Patent and Trademark Office.

[FR Doc. 2022–04970 Filed 3–8–22; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0017]

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 Consumer Financial Protection Bureau (CFPB or Bureau) requests the extension of the Office of Management and Budget’s (OMB’s) approval of the existing information collection titled ‘‘Electronic Fund Transfer Act (Regulation E)’’ approved under OMB Control Number 3170–0014.

DATES: Written comments are encouraged and must be received on or before April 8, 2022 to be assured of consideration.

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. 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, Paperwork Reduction Act Officer, at (202) 841–0544, 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: Electronic Fund Transfer Act (Regulation E).

OMB Control Number: 3170–0014.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 600,000.

Estimated Total Annual Burden Hours: 3,361,056.

Abstract: The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.,* requires accurate disclosure of the costs, terms, and rights relating to electronic fund transfer (EFT) services and remittance transfer services to consumers. Entities offering EFT services must provide consumers with full and accurate information regarding consumers' rights and responsibilities in connection with EFT services. These disclosures are intended to protect the rights of consumers using EFT services, such as automated teller machine (ATM) transfers, telephone bill-payment services, point-of-sale transfers at retail establishments, electronic check conversion, payroll cards, and preauthorized transfers from or to a consumer's account. EFTA also establishes error resolution procedures and limits consumer liability for unauthorized transfers in connection with EFT services. EFTA and Regulation E impose disclosure and other requirements on issuers and sellers of gift cards, gift certificates, and general-use prepaid cards. Further, EFTA and Regulation E provide protections for consumers in the United States who send remittance transfers to persons in a foreign country. It also provides comprehensive protections for consumers who use ''prepaid accounts.'' Tailored provisions governing disclosures, limited liability, error resolution, and periodic statements added new requirements regarding the posting of account agreements. Additionally, Regulations E regulates overdraft credit features offered in connection with prepaid accounts.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on 12/16/2021 (86 FR 71453) under Docket Number: CFPB–2021–0021. The Bureau is 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, Consumer Financial Protection Bureau.

[FR Doc. 2022–04953 Filed 3–8–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Wednesday, March 30, 2022 from 12:00 p.m. to 4:00 p.m. Eastern time.

ADDRESSES: The meeting will be held by videoconference/teleconference. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: CAPT Gregory H. Gorman, U.S. Navy, 703–275–6060 (voice), *gregory.h.gorman.mil@mail.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *http://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C.), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available at the DHB website, *http://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda or the March 30, 2022, meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide briefings to DHB members on current issues related to military medicine and upcoming DHB taskings.

Agenda: The DHB meeting will be called to order and begin with both opening and administrative remarks at noon. At 12:30 p.m. the discussion will move to mental health care access and recess at 1:30 p.m. for a 15-minute break. At 1:45 p.m., the DHB will discuss racial and ethnic health care disparities and then at 2:45 p.m. conclude with a discussion on virtual health in the Military Health System. After closing remarks at 3:45 p.m., the meeting will adjourn at 4:00 p.m. Any changes to the agenda can be found at the link provided in this **SUPPLEMENTARY INFORMATION** section.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 12:00 p.m. to 4:00 p.m. on March 30, 2022. The meeting will be held by videoconference/teleconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to *dha.ncr.dhb.mbx.defense-health-board@mail.mil* or by contacting Ms. Pamela Shell at (703) 275–6012 no later than Wednesday, March 23, 2022. Once registered, the web address and audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Pamela Shell at least five (5) business days prior to the meeting so that appropriate arrangements can be made. *Written Comments and Statements:* Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the

FACA, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB's Designated Federal Officer (DFO), Captain Gorman, at *gregory.h.gorman.mil@mail.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting.

Dated: March 4, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–04994 Filed 3–8–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Ronald E. McNair Postbaccalaureate Achievement Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Ronald E. McNair Postbaccalaureate Achievement (McNair) Program, Assistance Listing Number 84.217A. This notice relates to the approved information collection under OMB control number 1840–0619.

DATES:

Applications Available: March 9, 2022.

Deadline for Transmittal of Applications: April 25, 2022.

Deadline for Intergovernmental Review: June 22, 2022.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264), and available at *www.federalregister.gov/d/2021-27979*. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phaseout of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf*.

FOR FURTHER INFORMATION CONTACT: Carmen Gordon, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C219, Washington, DC 20202–4260. Telephone: (202) 453–7311. Email: *Carmen.Gordon@ed.gov*; or ReShone Moore, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B214, Washington, DC 20202–4260. Telephone (202) 453–7624. Email: *ReShone.Moore@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The McNair Program is one of the seven programs collectively known as the Federal TRIO Programs. The McNair Program awards discretionary grants to institutions of higher education for projects designed to provide disadvantaged college students with effective preparation for doctoral study.

Required services under the McNair Program are specified in sections 402E(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–15), and permissible services under the McNair Program are specified in section 402E(c) of the HEA.

Priorities: This notice contains two competitive preference priorities. Competitive Preference Priority 1 is from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities). Competitive Preference Priority 2 is from the Secretary's Notice of Administrative Priorities for Discretionary Grant Programs, published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities).

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which, if any, competitive preference priorities are addressed. If the applicant has addressed any of the competitive preference priorities, this information must also be listed on the McNair Program Profile Form.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional six points to an application, depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1: Promoting Equity in Student Access to Educational Resources and Opportunities (Up to 3 points).

Under this priority, an applicant must demonstrate that the project will be implemented by one or more of the following entities:

(1) Historically Black colleges and universities (as defined in this notice).

(2) Tribal Colleges and Universities (as defined in this notice).

(3) Minority-serving institutions (as defined in this notice).

Competitive Preference Priority 2: Applications that Demonstrate a Rationale (Up to 3 points).

Under this priority, an applicant proposes a project that demonstrates a rationale (as defined in this notice).

Definitions:

The definitions below are from the McNair Program regulations, 34 CFR 647.7(b); 34 CFR 77.1; and the Supplemental Priorities.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Groups underrepresented in graduate education include Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native American Pacific Islanders (as defined in section 320 of the HEA).

Historically Black colleges and universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the

key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources, such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp*. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf*, *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf*, and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf*.

Minority-serving institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Tribal College or University has the meaning ascribed it in section 316(b)(3) of the HEA.

Application Requirements: The following application requirements for FY 2022 are from section 402E(d) of the HEA (20 U.S.C. 1070a-15(d)) and the program regulations at 34 CFR 647.11.

An applicant must submit as part of its application, assurances that—

(a) Each participant enrolled in the project will be enrolled in a degree program at an institution of higher education that participates in one or more of the student financial assistance programs authorized under title IV of the HEA;

(b) Each participant given a summer research internship will have completed his or her sophomore year of study;

(c) (1) At least two-thirds of the students to be served will be low-income individuals who are first-generation college students; and

(2) The remaining students to be served will be members of groups underrepresented in graduate education (as defined in this notice); and

(d) A student will not be served by more than one McNair project at any one time, and the McNair project will collaborate with other McNair and Student Support Services program projects and other State and institutional programs at the grantee institution, including those supporting undergraduate research, so that more students can be served.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–15.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75 (except for 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98 and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 647. (e) The Administrative Priorities. (f) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $1,297,761,000 for the Federal TRIO Programs for FY 2022, of which we intend to use an estimated $51,778,211 for McNair awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for the Federal TRIO Programs.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $261,888 to $437,772.

Estimated Average Size of Awards: $276,889.

Maximum Award: The maximum award varies based on whether the applicant is currently receiving a McNair Program grant, as well as the number of participants served.

- For an applicant that is not currently receiving a McNair Program grant, the maximum award amount is $261,888 based upon a per participant cost of no more than $10,476 to serve a minimum of 25 eligible participants. For an applicant currently receiving a McNair Program grant and applying to serve a different campus, the maximum award is $261,888, to serve a minimum of 25 eligible participants.
- For an applicant currently receiving a McNair Program grant and not applying to serve a different campus, the maximum award is the amount equal to the applicant's base award amount for FY 2021, and the minimum number of participants is the number of participants in the project's FY 2021 grant award notification.

Estimated Number of Awards: 187.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education and combinations of those institutions.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html*.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* An applicant may submit more than one application for a McNair grant as long as each application describes a project that serves a different campus (34 CFR 647.10(a)). The Secretary is not designating any additional populations for which an applicant may submit a separate application under this competition (34 CFR 647.10(b)). The McNair Program regulations define ''different campus'' as ''a site of an institution of higher education that—(1) Is geographically apart from the main campus of the institution; (2) Is permanent in nature; and (3) Offers courses in educational programs leading to a degree, certificate,

or other recognized educational credential.'' (34 CFR 647.7(b)).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979*, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf*.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 647.31. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative, which includes the budget narrative, to no more than 65 pages and (2) use the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative excluding titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, which may be single-spaced.
- Use a font size that is either 12 point or larger and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative. We recommend that any application addressing the competitive preference priorities include no more than two additional pages for each priority, for a total of up to four additional pages for the competitive preference priorities if the two competitive preference priorities are addressed.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 647.21.

We will award up to 100 points to an application under the selection criteria and up to six additional points to an application under the competitive preference priorities, for a total score of up to 106 points. The maximum number of points available for each criterion is indicated in parentheses.

(a) *Need.* (Up to 16 Points). The Secretary reviews each application to determine the extent to which the applicant can clearly and definitively demonstrate the need for a McNair project to serve the target population. In particular, the Secretary looks for information that clearly defines the target population; describes the academic, financial and other problems that prevent potentially eligible project participants in the target population from completing baccalaureate programs and continuing to postbaccalaureate programs; and demonstrates that the project's target population is underrepresented in graduate education, doctorate degrees conferred and careers where a doctorate is a prerequisite.

(b) *Objectives.* (Up to 9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources—

(1) (Up to 2 points) Research or scholarly activity.

(2) (Up to 3 points) Enrollment in a graduate program.

(3) (Up to 2 points) Continued enrollment in graduate study.

(4) (Up to 2 points) Doctoral degree attainment.

(c) *Plan of Operation.* (Up to 44 points). The Secretary reviews each application to determine the quality of the applicant's plans of operation, including—

(1) (Up to 4 points) The plan for identifying, recruiting and selecting participants to be served by the project, including students enrolled in the SSS program;

(2) (Up to 4 points) The plan for assessing individual participant needs and for monitoring the academic growth of participants during the period in which the student is a McNair participant;

(3) (Up to 5 points) The plan for providing high-quality research and scholarly activities in which participants will be involved;

(4) (Up to 5 points) The plan for involving faculty members in the design of research activities in which students will be involved;

(5) (Up to 5 points) The plan for providing internships, seminars, and other educational activities designed to prepare undergraduate students for doctoral study;

(6) (Up to 5 points) The plan for providing individual or group services designed to enhance a student's successful entry into postbaccalaureate education;

(7) (Up to 3 points) The plan to inform the institutional community of the goals and objectives of the project;

(8) (Up to 8 points) The plan to ensure proper and efficient administration of the project including, but not limited to, matters such as financial management, student records management, personnel management, the organizational structure, and the plan for coordinating the McNair project with other programs for disadvantaged students; and

(9) (Up to 5 points) The follow-up plan that will be used to track the academic and career accomplishments of participants after they are no longer participating in the McNair project.

(d) *Quality of key personnel.* (Up to 9 points). The Secretary evaluates the quality of key personnel the applicant plans to use on the project on the basis of the following:

(1) (i) (Up to 3 points) The job qualifications of the project director.

(ii) (Up to 3 points) The job qualifications of each of the project's other key personnel.

(iii) (Up to 3 points) The quality of the project's plan for employing highly qualified persons, including the procedures to be used to employ members of groups underrepresented in higher education, including Blacks, Hispanics, American Indians, Alaska Natives, Asian Americans and Pacific Islanders (including Native Hawaiians).

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(e) *Adequacy of the resources and budget.* (Up to 15 points). The Secretary evaluates the extent to which—

(1) (Up to 5 points) The applicant's proposed allocation of resources in the budget is clearly related to the objectives of the project;

(2) (Up to 5 points) Project costs and resources, including facilities, equipment, and supplies, are reasonable in relation to the objectives and scope of the project; and

(3) (Up to 5 points) The applicant's proposed commitment of institutional resources to the McNair participants as, for example, the commitment of time from institutional research faculty and the waiver of tuition and fees for McNair participants engaged in summer research projects.

(f) *Evaluation plan.* (Up to 7 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) (Up to 2 points) Are appropriate to the project's objectives;

(2) (Up to 3 points) Provide for the applicant to determine, in specific and measurable ways, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) (Up to 2 points) Provide for a description of other project outcomes, including the use of quantifiable measures, if appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws, that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 647.21 and the competitive preference priorities. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 647.22, the Secretary will award prior experience points to applicants that conducted a McNair Program project during budget periods 2017–18, 2018–19, 2019–20, and 2020–21, based on their documented experience. Prior experience points, if any, will be added to the application's average reviewer score to determine the total score for each application.

If there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographic areas in which there is a significantly low degree attainment rate in a congressional district, in accordance with the following procedures. The Secretary will identify and recommend an award for—

- First, applicants in the funding band that are located within a congressional district with the lowest bachelor's degree attainment rate below the national average for the population 25 years and older. If this first tie-breaker provision exhausts available funds, then no further action is taken.
- Second, applicants in the funding band that are located within a congressional district in which, among those 25 years of age and over, the percentage who attained a graduate/professional degree is below the national average. If this second tie-breaker provision exhausts available funds, then no further action is taken.
- Third, applicants in the funding band that are located within a congressional district with the highest percentage of Pell Grant recipients.

Note: In applying the tie-breaker criteria, the Department will use the most current data available. With respect to congressional districts and degree attainment data within congressional districts, the most recently available degree attainment data pre-dates the 118th United States Census for Congressional Districts.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures for the McNair Program. The success of the McNair Program will be measured by the McNair Program participants' success in completing research and participation in scholarly activities, enrollment in a graduate program, continued enrollment in graduate study, and the attainment of a doctoral degree. All McNair Program grantees will be required to submit an annual performance report.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Michelle Asha Cooper,

Deputy Assistant Secretary for Higher Education Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2022–04987 Filed 3–8–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2221–000]

Empire District Electric Company; Notice of Authorization for Continued Project Operation

On February 28, 2020, Empire District Electric Company, licensee for the Ozark Beach Hydroelectric Project No. 2221, filed an Application for a New License for Ozark Beach Hydroelectric Project pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Ozark Beach Hydroelectric Project is located on the White River near the Town of Forsyth, in Taney County, Missouri.

The license for Project No. 2221 was issued for a period ending February 28, 2022. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license

after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2221 is issued to Empire District Electric Company, for a period effective March 1, 2022 through February 28, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Empire District Electric Company, is authorized to continue operation of the Ozark Beach Hydroelectric Project, until such time as the Commission acts on its application for a new license.

Dated: March 3, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–04959 Filed 3–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD22–4–000]

Municipality of Anchorage Water & Wastewater Utility; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On March 1, 2022, the Municipality of Anchorage Water & Wastewater Utility filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Reservoirs 3 and 4 Energy Recovery Turbine Project would have an installed capacity of 37 kilowatts (kW), and would be located along an existing 16-inch pipeline at the applicant's Reservoirs 3 and 4 Valve Facility in Anchorage, Anchorage Borough, Alaska.

Applicant Contact: Todd Carroll, P.E., Anchorage Water & Wastewater Utility, 3000 Artic Boulevard, Anchorage, AK 99503, 907–564–2753, *todd.carroll@awwu.biz.*

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) One 37 kW turbine/generator unit; (2) 10-inch-diameter intake and discharge pipes; and (3) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 254 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Reservoirs 3 and 4 Energy Recovery Turbine Project will not alter the primary purpose of the conduit, which is to transport water for municipal use. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice. Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room

[1] 18 CFR 385.2001–2005 (2021).

1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD22–4) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: March 3, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–04958 Filed 3–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–2–000]

Tennessee Gas Pipeline Company, LLC ; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Cumberland Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Cumberland Project involving construction and operation of facilities by Tennessee Gas Pipeline Company, LLC (TGP) in Dickson, Houston, and Steward counties, Tennessee. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on April 4, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on November 5, 2021, you will need to file those comments in Docket No. PF22–2–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement between you and the company, the pipeline company could initiate condemnation proceedings in court where compensation would be determined in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC website (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has expert staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(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 (left side of screen). Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by 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 will be asked to select the type of filing you are making; a comment on a particular project is considered a ''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 (PF22–2–000) 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, MD 20858.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Planned Project

TGP plans to construct and operate approximately 32 miles of new 30-inch-diameter natural gas pipeline (Cumberland Pipeline) from its existing Lines 100–3 and 100–4 to the Tennessee Valley Authority's (TVA) Cumberland Fossil Plant. TVA is evaluating options to replace capacity following the proposed retirement of its existing coal-fired Cumberland Fossil Plant. The Cumberland Pipeline would be in Dickson, Houston, and Steward counties, Tennessee; and it would provide about 245,000 dekatherms per day of natural gas per day to TVA.

The Cumberland Project would consist of the following facilities:

- Approximately 32 miles of new 30-inch-diameter natural gas lateral pipeline, as described above.
- New Pressure Regulation Station comprised of bi-directional back pressure regulation facilities (including a new Mainline valve [MLV] on each of TGP's Lines 100–3 and 100–4 at the origin of the newly planned Cumberland Pipeline in Dickson County, Tennessee.
- New Cumberland Meter Station at the terminus of the planned Cumberland Pipeline within TVA's newly proposed power plant in Steward County, Tennessee.
- New in-line inspection traps at each end of the planned Cumberland Pipeline.
- New MLV located at an intermediate location along the planned Cumberland Pipeline.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb about 494 acres of land for the aboveground facilities and the pipeline. Following construction, TGP would maintain about 192 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 85 percent of the planned pipeline route parallels an existing TVA overhead electric transmission line right-of-way.

The NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- socioeconomics;
- environmental justice, and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present our independent analysis of the environmental issues. If Commission staff prepares an EA, a Notice of Schedule for the Preparation of an Environmental Assessment will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the proposed project. If Commission staff prepares an EIS, a Notice of Intent to Prepare an EIS/Notice of Schedule will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page *https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*) If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document our findings on the impacts on historic properties and

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.8.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; local community groups, schools, churches, and businesses; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project (and includes a mailing address with their comment). Commission staff will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF22–2–000 in your request. If you are requesting a change to your address, please be sure to include your name and updated address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Becoming an Intervenor

Once TGP files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

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. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF22–2). 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 eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public meetings or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–04964 Filed 3–8–22; 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: RP22–672–000.

Applicants: Bear Creek Storage Company, L.L.C.

Description: Compliance filing: Annual Report on Operational Transactions 2022 to be effective N/A.

Filed Date: 3/2/22.

Accession Number: 20220302–5035.

Comment Date: 5 p.m. ET 3/14/22.

Docket Numbers: RP22–673–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 3–2–22 to be effective 3/1/2022.

Filed Date: 3/2/22.

Accession Number: 20220302–5052.

Comment Date: 5 p.m. ET 3/14/22.

Docket Numbers: RP22–674–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Quality of Gas—PTR Language Modification eff 4–1–22 to be effective 4/1/2022.

Filed Date: 3/2/22.

Accession Number: 20220302–5213.

Comment Date: 5 p.m. ET 3/14/22.

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: *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: March 3, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04952 Filed 3–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2955–000]

City of Watervliet, New York; Notice of Authorization for Continued Project Operation

On February 28, 2020, the City of Watervliet, New York, licensee for the Normanskill Hydroelectric Project No.2955, filed an Application for a Subsequent Minor License for the Normanskill Hydroelectric Project pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Normanskill Hydroelectric Project located on the Normans Kill in Guilderland, Albany County, New York

The license for Project No.2955 was issued for a period ending February 28, 2022. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year

an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No.2955 is issued to the City of Watervliet, New York, for a period effective March 1, 2022 through February 28, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Watervliet, New York, is authorized to continue operation of the Normanskill Hydroelectric Project, until such time as the Commission acts on its application for a Subsequent Minor license.

Dated: March 3, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–04962 Filed 3–8–22; 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 rate filings:

Docket Numbers: ER10–2532–018.
Applicants: Crescent Ridge LLC.
Description: Notice of Change in Status of Crescent Ridge LLC, et al.
Filed Date: 3/2/22.
Accession Number: 20220302–5292.
Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER13–2387–007; ER15–190–013; ER10–1333–014; ER18–1343–006.
Applicants: Carolina Solar Power, LLC, Duke Energy Commercial Enterprises, Inc., Duke Energy Renewable Services, LLC, Duke Energy Florida, Inc.
Description: Amendment to June 12, 2020 Notice of Change in Status of the Duke MBR Sellers et al.
Filed Date: 2/14/22.
Accession Number: 20220214–5282.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER16–1804–003.
Applicants: Deepwater Wind Block Island, LLC.
Description: Compliance filing: Notice of Change in Status and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5087.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER18–664–003.
Applicants: Steamboat Hills LLC.
Description: Notice of Non-Material Change in Status of Steamboat Hills LLC.
Filed Date: 3/3/22.
Accession Number: 20220303–5120.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER20–2717–001; ER20–2714–001.
Applicants: Headwaters Wind Farm II LLC, Crossing Trails Wind Power Project LLC.
Description: Notice of Change in Status of Crossing Trails Wind Power Project LLC, et. al.
Filed Date: 3/2/22.
Accession Number: 20220302–5293.
Comment Date: 5 p.m. ET 3/23/22.
Docket Numbers: ER20–2881–003; ER21–110–001.
Applicants: Harts Mill TE Holdings LLC, Harts Mill Solar, LLC.
Description: Notice of Change in Status of Harts Mill Solar, LLC, et al.
Filed Date: 3/3/22.
Accession Number: 20220303–5122.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER21–6–001.
Applicants: Muscle Shoals Solar, LLC.
Description: Compliance filing: Notice of Change in Status and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5086.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–9–002; ER21–86–002; ER21–88–002.
Applicants: Orange County Energy Storage 3 LLC, Orange County Energy Storage 2 LLC, Henrietta D Energy Storage LLC.
Description: Notice of Non-Material Change in Status of Henrietta D Energy Storage LLC, et al.
Filed Date: 3/3/22.
Accession Number: 20220303–5126.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–1325–002.
Applicants: ISO New England Inc., New Hampshire Transmission, LLC.
Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: NHT; Filing to Revise Effective Date for Order 864 Revisions to be effective 1/27/2020.
Filed Date: 3/3/22.
Accession Number: 20220303–5101.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER21–2217–003.
Applicants: Lincoln Land Wind, LLC.
Description: Compliance filing: Notice of Change in Status and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5084.
Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER22–1166–000.
Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: Compliance filing: Duke Energy Florida, LLC submits tariff filing per 35: Order No. 676–J Compliance Filing to be effective 12/31/9998.
Filed Date: 3/2/22.
Accession Number: 20220302–5201.
Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER22–1167–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: ISO–NE/NEPOOL; Tariff Chgs re Accelerated Billing of FCM Payments and Charges to be effective 5/1/2022.
Filed Date: 3/2/22.
Accession Number: 20220302–5209.
Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER22–1168–000.
Applicants: ISO New England Inc., Cross-Sound Cable Company, LLC.
Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: ISO–NE & Cross-Sound Cable; Revisions to Schedule 18 to be effective 12/31/9998.
Filed Date: 3/2/22.
Accession Number: 20220302–5212.
Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER22–1169–000.
Applicants: MATL LLP.
Description: Compliance filing: Order 676–J Compliance Filing (RM05–5) to be effective 12/31/9998.

Filed Date: 3/2/22.
Accession Number: 20220302–5219.
Comment Date: 5 p.m. ET 3/23/22.
Docket Numbers: ER22–1170–000.
Applicants: Southern Company Services, Inc.
Description: Southern Companies request that the Commission waive compliance requirements for the NAESB business practice standards.
Filed Date: 3/2/22.
Accession Number: 20220302–5225.
Comment Date: 5 p.m. ET 3/23/22.
Docket Numbers: ER22–1171–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA and ICSA, Service Agreement Nos. 6354 and 6355; Queue No. AD1–130 to be effective 1/31/2022.
Filed Date: 3/2/22.
Accession Number: 20220302–5228.
Comment Date: 5 p.m. ET 3/23/22.
Docket Numbers: ER22–1173–000,
Applicants: Southern Illinois Generation Company, LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status and Change in Seller Categories to be effective 5/3/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5008.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1174–000.
Applicants: Tilton Energy LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status and Change in Seller Categories to be effective 5/3/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5009.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1175–000.
Applicants: Gibson City Energy Center, LLC.
Description: Compliance filing: Notice of Non-Material Change in Status to be effective N/A.
Filed Date: 3/3/22.
Accession Number: 20220303–5014.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1176–000.
Applicants: FL Solar 5, LLC.
Description: § 205(d) Rate Filing: FL Solar 5, LLC Revised Tariff Filing to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5021.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1177–000.
Applicants: Shelby County Energy Center, LLC.
Description: Compliance filing: Notice of Non-Material Change in Status to be effective N/A.
Filed Date: 3/3/22.
Accession Number: 20220303–5020.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1178–000.
Applicants: KCE NY 1, LLC.
Description: § 205(d) Rate Filing: Change in Status 2022 to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5073.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1179–000.
Applicants: Plum Creek Wind, LLC.
Description: Market: Notice of Change in Status, Triennial Update, and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5078.
Comment Date: 5 p.m. ET 5/2/22.
Docket Numbers: ER22–1180–000.
Applicants: Willow Creek Wind Power LLC.
Description: Market: Notice of Change in Status, Triennial Update, and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5079.
Comment Date: 5 p.m. ET 5/2/22.
Docket Numbers: ER22–1181–000.
Applicants: Orsted US Trading LLC.
Description: Market: Notice of Change in Status, Triennial Update, and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5081.
Comment Date: 5 p.m. ET 5/2/22.
Docket Numbers: ER22–1182–000.
Applicants: Haystack Wind Project, LLC.
Description: Market: Notice of Change in Status, Triennial Update, and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5082.
Comment Date: 5 p.m. ET 5/2/22.
Docket Numbers: ER22–1183–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Camellia Solar LGIA Termination Filing to be effective 3/3/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5095.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1184–000.
Applicants: Inspire Energy Holdings, LLC.
Description: Compliance filing: Notice of Change in Status and Revised MBR Tariff to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5104.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1185–000.
Applicants: Constellation Energy Generation, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to Reactive Rate Schedule and Request for Waiver to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5117.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1186–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 397 to be effective 2/1/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5140.
Comment Date: 5 p.m. ET 3/24/22.
Docket Numbers: ER22–1187–000.
Applicants: J. Aron & Company LLC.
Description: § 205(d) Rate Filing: Revisions to MBR Tariff to Update Category Seller Status in SW and NW Regions to be effective 3/4/2022.
Filed Date: 3/3/22.
Accession Number: 20220303–5142.
Comment Date: 5 p.m. ET 3/24/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *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: March 3, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04951 Filed 3–8–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7590–016]

City of Nashua, New Hampshire; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity amendment of license.

b. *Project No.:* 7590–016.

c. *Date Filed:* January 31, 2022.

d. *Applicant:* City of Nashua, New Hampshire.

e. *Name of Project:* Jackson Mills.

f. *Location:* The project is located on the Nashua River, in the Town of Nashua, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Deb Chisholm, Waterways Manager, City of Nashua, PO Box 2019, Nashua, NH 03061, 603–589–3092, *chisholmd@nashuanh.gov*.

i. *FERC Contact:* Jeffrey V. Ojala, 202–502–8206, *Jeffrey.Ojala@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice, or April 4, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–7590–016. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to amend its exemption to replace the current turbine/generator which has completed its functional life cycle, and as part of ongoing maintenance, is scheduled for replacement in 2022. To remove the existing turbine/generator and install the new one, certain portions of the powerhouse building would need to be demolished and reconstructed to fit the new turbine/generator arrangement, including a replacement draft tube. As such, the proposed amendment would require the temporary installation of a cofferdam at the downstream toe of the dam to encompass and isolate the draft tube and tailrace. The licensee would remove ledge and rock from the existing tailrace to allow the installation of the replacement draft tube and to improve hydraulic performance of existing turbine flows.

l. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 3, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–04957 Filed 3–8–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0192; FR ID 75540]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 9, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the time period allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0192.

Title: Section 87.103, Posting Station License.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents and Responses: 33,622 respondents, 33,622 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 303.

Total Annual Burden: 8,406 hours.

Annual Cost Burden: No cost.

Needs and Uses: Section 87.103 states the following: (a) Stations at fixed locations. The license or a photocopy must be posted or retained in the station's permanent records. (b) Aircraft radio stations. The license must be either posted in the aircraft or kept with the aircraft registration certificate. If a single authorization covers a fleet of aircraft, a copy of the license must be either posted in each aircraft or kept with each aircraft registration certificate. (c) Aeronautical mobile stations. The license must be retained as a permanent part of the station records. The recordkeeping requirement contained in Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, No. 2020 of the International Radio Regulation, and Article 30 of the Convention on International Civil Aviation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–04991 Filed 3–8–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 75068]

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VIII will hold its third meeting on March 30, 2022 at 1:00 p.m. EST.

DATES: March 30, 2022.

ADDRESSES: The Meeting will be held via conference call and available to the public via WebEx at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Suzon Cameron, Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–1916 or email: *suzon.cameron@fcc.gov,* or Kurian Jacob, Deputy Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–2040 or email: *kurian.jacob@fcc.gov.*

SUPPLEMENTARY INFORMATION: The meeting on March 30, 2022, at 1:00 p.m. EST, will be held electronically only and may be viewed live, by the public, at *http://www.fcc.gov/live.* Any questions that arise during the meeting should be sent to *CSRIC@fcc.gov* and will be answered at a later date. The meeting is being held in a wholly electronic format in light of travel and gathering restrictions related to COVID–19 in place in Washington, DC, and the larger U.S., which affect members of CSRIC and the Commission. The CSRIC is a Federal Advisory Committee that will provide recommendations to the Commission to improve the security, reliability, and interoperability of communications systems. On June 30, 2021, the Commission, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC VII for a period of two years through June 29, 2023. The meeting on March 30, 2022, will be the third meeting of CSRIC VIII under the current charter.

The Commission will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Suzon Cameron, CSRIC VIII Designated Federal Officer, by email to *CSRIC@fcc.gov.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the Commission can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–04993 Filed 3–8–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket Nos. 21–13, 21–14, 21–15]

Policy Statements on Representative Complaints, Attorney Fees, and Retaliation

AGENCY: Federal Maritime Commission.

ACTION: Notice of Availability.

SUMMARY: The Federal Maritime Commission (Commission) is issuing this notice to advise the public of the availability of three new policy statements related to private party complaints. The Commission adopted the recommendation of the Fact Finding Officer in Fact Finding No. 29: International Ocean Transportation Supply Chain Engagement to issue policy statements on the ability of shippers' associations and trade associations to file complaints with the Commission, the standard for recovering attorney fees in private party complaints, and the anti-retaliation provision of the Shipping Act.

ADDRESSES: The policy statements can be found at the following link: *https://www.fmc.gov/resources-services/filing-a-shipping-act-complaint/.*

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On December 28, 2021, the Commission issued three policy statements to provide guidance to shippers and others on bringing private party complaints at the Commission and to address barriers identified by the trade community as disincentives to filing actions at the agency. The Commission voted in September 2021 to adopt the recommendation of the Fact Finding Officer of Fact Finding No. 29: International Ocean Transportation Supply Chain Engagement to issue policy statements on the anti-retaliation provision of the Shipping Act (46 U.S.C. 41104(a)(3)), the standard for recovering attorney fees in private party complaints, and the ability of shippers' associations and trade associations to file a complaint with the Commission alleging a violation of the Shipping Act.

Policy Statement on Representative Complaints: In the first policy statement, the Commission restates that shippers' associations and trade associations may file complaints alleging violations of 46 U.S.C. Chapter 411.

Policy Statement on Attorney Fees: The second policy statement explains the Commission's approach on attorney fees and reiterates that a party who brings an unsuccessful complaint is not automatically required to pay the other party's attorney fees.

Policy Statement on Retaliation: Finally, in the third statement on retaliation, the Commission emphasizes that it broadly defines both who can bring a retaliation complaint, as well as the types of shipper activity that are protected under the existing retaliation prohibitions. This policy statement also addresses the proof necessary for certain retaliation complaints.

The policy statements can be found at the following link: *https://www.fmc.gov/resources-services/filing-a-shipping-act-complaint/.*

By the Commission.

William Cody,

Secretary.

[FR Doc. 2022–04658 Filed 3–8–22; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Prevention Services Data Collection (OMB #0970–0529)

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Children's Bureau is requesting a 3-year extension of the Prevention Services Data Collection (OMB #0970–0529, expiration 7/31/2022). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing.

SUPPLEMENTARY INFORMATION:

Description: Section 471(e)(4)(E) of the Social Security Act (the Act) (42 U.S.C. 671), as amended by Public Law 115–123, requires state and tribal child welfare agencies to collect and report to ACF information on children receiving prevention and family services and programs. Title IV–E Agencies must report the following on a bi-annual basis:

- The specific services or programs provided
- The total expenditures for each of the services or programs provided
- The duration of the services or programs provided, and
- If the child was identified in a prevention plan as a candidate for foster care:
  - The child's placement status at the beginning, and at the end, of the 12-month period that begins on the date the child was identified as a candidate for foster care in a prevention plan; and
  - Whether the child entered foster care during the initial 12-month period and during the subsequent 12-month period.

To date, approximately ¾ of the Title IV–E Agencies have chosen to provide these prevention services; however, it is believed that this number will continue to increase over time as states voluntarily opt-in to the program in order to utilize IV–E funding to provide prevention programs and services to children and families.

The data collected will continue to inform federal policy decisions, program management, and responses to Congressional and Departmental inquiries. Specifically, the data will provide information about the use and availability of prevention services to children to prevent the need for foster care placement. The data contains personally identifiable information (date of birth and race/ethnicity).

Respondents: Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Prevention Services Data Collection	55	2	31	3,410

Estimated Total Annual Burden Hours: 3,410.

Authority: Section 471(e)(4)(E) of the Act (42 U.S.C. 671), as amended by Public Law 115–123.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–04939 Filed 3–8–22; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1977–N–0015 (Formerly 77N–0187); DESI 7663]

Drugs for Human Use; Drug Efficacy Study Implementation; Potassium Aminobenzoate Oral Preparations; Withdrawal of Hearing Request; Withdrawal of New Drug Application; Final Resolution of Drug Efficacy Study Implementation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that all outstanding hearing requests regarding POTABA (potassium aminobenzoate) Tablets, Capsules, Powder, and Envules under Docket No. FDA–1977–N–0015 (formerly 77N–0187) (this Drug Efficacy Study Implementation (DESI) 7663) have been withdrawn. Therefore, as proposed in the notice of opportunity for hearing (NOOH), FDA finds that the products subject to the application identified in this docket, or any identical, related, or similar (IRS) products, have not been shown to be effective for use under the conditions of use prescribed, recommended, or suggested in the labeling, and hereby withdraws approval of the application under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: This notice is applicable April 8, 2022.

ADDRESSES: 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 between 9 a.m. and 4 p.m., Monday through Friday. Publicly available submissions may be seen in the docket.

The most relevant background documents regarding this matter are available in the docket. However, additional background documents are available upon request (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Astrid Lopez-Goldberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5185, Silver Spring, MD 20993–0002, 301–796–3485, email: *Astrid.LopezGoldberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1962, Congress amended the FD&C Act to require that new drugs be proven effective for their labeled indications, as well as safe, in order to obtain FDA approval (Drug Amendments of 1962 (Pub. L. 87–781)). These amendments also required FDA to conduct a retrospective evaluation of the effectiveness of the drug products that FDA had approved as safe between 1938 and 1962. FDA contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to make an initial evaluation of the effectiveness of over 3,400 products that had been approved only for safety between 1938 and 1962. The NAS/NRC reports for these drug products were submitted to FDA in the late 1960s and early 1970s. The Agency reviewed and reevaluated the reports and published its findings in **Federal Register** notices. FDA's administrative implementation of the NAS/NRC reports was called the DESI. DESI covered the approximately 3,400 products specifically reviewed by the NAS/NRC, as well as the even larger number of IRS products that entered the market without FDA approval. If FDA's final DESI determination classifies a drug product as lacking substantial evidence of effectiveness for one or more indications, that drug product and those IRS to it may no longer be marketed for such indications and are subject to enforcement action as unapproved new drugs.

II. Final Resolution of Hearing Request Regarding Potassium Aminobenzoate Oral Preparations Under Docket No. FDA–1977–N–0015 (Formerly 77N–0187); DESI 7663

In a **Federal Register** notice published on August 28, 1970 (35 FR 13755), FDA announced its evaluation of a report received from the NAS/NRC under DESI 7663 regarding POTABA (potassium aminobenzoate) Tablets, Capsules, Powder, and Envules, New Drug Application (NDA) 007663, held by Glenwood LLC (formerly known as Glenwood Laboratories, Inc.), 83 Summit St., Tenafly, NJ 07670 (herein after ''Glenwood''). The notice stated that the drug products were possibly effective in the treatment of scleroderma, dermatomyositis, morphea, linear scleroderma, pemphigus, and Peyronie's Disease and lacked substantial evidence of effectiveness for the treatment of rheumatoid arthritis, sarcoidosis, and pulmonary fibrosis. Glenwood, and any other person marketing such drug products without approval, was given 60 days to revise its labeling to delete those indications for which substantial evidence of effectiveness was lacking and 6 months to submit data to provide substantial evidence of effectiveness for the indications for which the drug was regarded as possibly effective. The notice stated that, at the end of the 6-month period, FDA would evaluate the data to determine whether substantial evidence of effectiveness had been provided, and, if it had not, FDA would initiate the withdrawal of approval of NDA 007663 under section 505(e) of the FD&C Act (21 U.S.C. 355(e)).

Glenwood did not submit data to provide substantial evidence of effectiveness for the indications for which the drug was regarded as possibly effective within the period provided by the 1970 **Federal Register** notice, and the Agency issued a NOOH on the proposed withdrawal of approval of NDA 007663 in the **Federal Register** of February 4, 1972 (37 FR 2688).

In response to a court order, FDA published a notice in the **Federal Register** on December 14, 1972 (37 FR 26623), which stated that POTABA, among other drugs, could remain on the market pending completion of further scientific studies.

In a **Federal Register** notice published on August 19, 1977 (42 FR 41922), the Agency revoked the exemption granted in the December 14, 1972, notice pursuant to which POTABA had remained on the market pending its continued study. In a separate NOOH for DESI 7663, also published in the **Federal Register** of August 19, 1977 (42 FR 41921), FDA noted that Glenwood did not submit data providing substantial evidence of effectiveness and that no other person had submitted data or protocols or expressed an intention to perform clinical studies on potassium aminobenzoate. This notice reclassified the possibly effective indications to lacking substantial evidence of effectiveness and proposed to issue an order under section 505(e) of the FD&C Act withdrawing approval of Glenwood's NDA and all amendments

and supplements thereto on the grounds that new information, evaluated together with the evidence available when the application was approved, showed there is a lack of substantial evidence that the drug is effective under the conditions of use prescribed, recommended, or suggested in the labeling. The Agency again invited Glenwood, and any other interested person(s) who would be adversely affected by the withdrawal of approval of NDA 007663, to submit: (1) On or before September 19, 1977, a written notice of appearance and request for hearing and (2) on or before October 17, 1977, the data, information, and analyses relied upon to justify a hearing.

On September 12, 1977, Glenwood filed a written notice of appearance and requested a hearing, and on October 17, 1977, Glenwood submitted data in support of its hearing request. Along with these submissions, Glenwood requested that the Agency delay action on the hearing request until the firm had conducted another placebo-controlled study. Subsequently, Glenwood initiated a clinical trial at the Downstate Medical Center of the State University of New York and supplemented its hearing request with additional data, including a progress report on the clinical trial of POTABA conducted at the Downstate Medical Center.

Following a meeting between Glenwood and FDA on November 18, 1985, Glenwood sponsored another controlled clinical trial, and the final study report was submitted on February 4, 1993.

By letter dated October 21, 2010, FDA asked Glenwood whether it wanted to pursue its pending hearing request regarding POTABA. By letter dated November 11, 2010, Glenwood affirmed its hearing request.

By letter dated June 8, 2020, FDA again asked Glenwood whether it wanted to pursue its pending hearing request regarding POTABA. By letter dated July 2, 2020, Cheplapharm Arzneimittel GmbH, successor-in-interest to Glenwood LLC, stated that it did not wish to pursue the hearing request for POTABA.

III. Conclusions and Order

There are no outstanding hearing requests regarding potassium aminobenzoate oral preparations under Docket No. FDA–1977–N–0015, DESI 7663. Therefore, as proposed in the NOOH, FDA withdraws approval of NDA 007663 under section 505(e) of the FD&C Act.

Shipment in interstate commerce of any drug product identified in this docket under DESI 7663, or any IRS product, that is not the subject of an approved NDA or abbreviated new drug application is unlawful as of the effective date of this notice (see **DATES**). Any person who wishes to determine whether this notice covers a specific product should write to Astrid Lopez-Goldberg at the Center for Drug Evaluation and Research (see **FOR FURTHER INFORMATION CONTACT**). Firms should be aware that, after the applicable date of this notice (see **DATES**), FDA intends to take enforcement action without further notice against any firm that manufactures or ships in interstate commerce any unapproved product covered by this notice.

IV. Discontinued Products

Firms must notify the Agency of certain product discontinuations in writing under section 506C(a) of the FD&C Act (21 U.S.C. 356c). See *http://www.fda.gov/Drugs/DrugSafety/DrugShortages/ucm142398.htm.* Some firms may have previously discontinued manufacturing or distributing products covered by this notice without discontinuing the listing as required under section 510(j) of the FD&C Act (21 U.S.C. 360(j)). Other firms may discontinue manufacturing or distributing listed products in response to this notice. All firms are required to electronically update the listing of their products under 510(j) of the FD&C Act to reflect discontinuation of unapproved products covered by this notice (21 CFR 207.57(b)). Questions on electronic drug listing updates should be sent to *eDRLS@fda.hhs.gov.* In addition to the required update, firms can also notify the Agency of product discontinuation by sending a letter, signed by the firm's chief executive officer and fully identifying the discontinued product(s), including the product National Drug Code number(s), and stating that the manufacturing and/or distribution of the product(s) have been discontinued. The letter should be sent electronically to Astrid Lopez-Goldberg (see **FOR FURTHER INFORMATION CONTACT**). FDA plans to rely on its existing records, including its drug listing records, the results of any future inspections, or other available information, when it identifies violative products for enforcement action.

Dated: March 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04971 Filed 3–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0075]

Food and Drug Administration Quality Metrics Reporting Program; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the establishment of a docket to solicit comments on changes to FDA's previously proposed quality metrics reporting program (QM Reporting Program). This notice describes considerations for refining the QM Reporting Program based on lessons learned from two pilot programs with industry that were announced in the **Federal Register** in June 2018, a Site Visit Program and a Quality Metrics Feedback Program, as well as stakeholder feedback on FDA's 2016 revised draft guidance for industry entitled ''Submission of Quality Metrics Data.'' FDA is interested in responses to the questions listed in section III of this document, in addition to any general comments on the proposed direction for the program. This notice is not intended to communicate our regulatory expectations for reporting quality metrics data to FDA but is instead intended to seek input from industry to inform the future regulatory approach.

DATES: Submit either electronic or written comments by June 7, 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 June 7, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 7, 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–2022–N–0075 for ''FDA Quality Metrics Reporting Program; Establishment of a Public Docket; 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 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: Jean Chung, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6655, Silver Spring, MD 20993, 301–796–1874, *jean.chung@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Quality Metrics

For pharmaceutical manufacturing, quality metrics are objective means of measuring, evaluating, and monitoring the product and process life cycle to proactively identify and mitigate quality risks; thereby managing operations at higher levels of safety, efficacy, delivery, and performance. Quality metrics are used throughout the drug and biological product industry to monitor quality control systems and processes and drive continuous improvement efforts in manufacturing. Quality metrics are important because failure to update and innovate manufacturing practices and lack of operational reliability (*i.e.,* state of control) can lead to quality problems that have a negative impact on public health.

The minimum standard for ensuring that a manufacturer's products are safe and effective is compliance with current good manufacturing practice (CGMP) requirements as outlined in current regulations and as recommended in current policies (21 CFR parts 210 and 211 for drug products and the International Conference on Harmonisation guidance for industry entitled ''Q7 Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients'' (September 2016); available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q7-good-manufacturing-practice-guidance-active-pharmaceutical-ingredients-guidance-industry*). However, compliance with CGMP does not necessarily indicate whether a manufacturer is investing in improvements and striving for sustainable compliance, which is the state of having consistent control over manufacturing performance and quality. Sustainable CGMP compliance is difficult to achieve without a focus on continual improvement.

An effective Pharmaceutical Quality System (PQS) ensures both sustainable CGMP compliance and supply chain robustness. Quality metrics data can contribute to a manufacturer's ability to develop an effective PQS because metrics provide insight into manufacturing performance and enable the identification of opportunities for updates and innovation to manufacturing practices. Quality metrics also play an important role in supplier oversight and can be used to inform the oversight of outsourced activities and material suppliers as well as appropriate monitoring activities to minimize supply chain disruptions.

Quality metrics data provided by establishments can also be useful to FDA. These data can assist the Agency in developing compliance and inspection policies and practices to improve the Agency's ability to predict, and therefore possibly mitigate, future drug shortages, and to encourage the pharmaceutical industry to implement innovative quality management systems for pharmaceutical manufacturing. For example, quality metrics data can be applied to FDA's risk-based inspection scheduling, reducing the frequency and/or length of routine surveillance inspections for establishments with metrics data that suggest sustainable compliance. Additionally, the submission of quality metrics data can provide ongoing insight into an establishment's operations between inspections.

As part of FDA's shift towards a risk-based approach to regulation, the Agency proposed to develop and implement a QM Reporting Program to support its quality surveillance activities, as described in section I.B of this notice. Under this program, FDA

intends to analyze the quality metrics data submitted by establishments to: (1) Obtain a more quantitative and objective measure of manufacturing quality and reliability at an establishment; (2) integrate the metrics and resulting analysis into FDA's comprehensive quality surveillance program; and (3) apply the results of the analysis to assist in identifying products at risk for quality problems (*e.g.,* quality-related shortages and recalls).

B. FDA Guidance for Industry on the Submission of Quality Metrics Data

In July 2015, FDA issued the draft guidance entitled ''Request for Quality Metrics'' (80 FR 44973), which described a potential mandatory program for product-based reporting of quality metrics. Under this proposed program, manufacturers would have submitted four primary metrics (lot acceptance rate (LAR), product quality complaint rate (PQCR), invalidated/overturned out-of-specification rate (IOOSR), and annual product review (APR) or product quality review on-time rate) and three optional metrics (senior management engagement, corrective and preventative action (CAPA) effectiveness, and process capability/performance). Stakeholder comments on the guidance included concerns regarding the burden associated with collecting, formatting, and submitting data at a product level across multiple establishments; technical comments on the proposed metrics and definitions; and legal concerns regarding the proposed mandatory program. Stakeholder commenters also suggested a phased-in approach to allow learning by both industry and FDA.

In response to this feedback, FDA published a revised draft guidance in November 2016 entitled ''Submission of Quality Metrics Data'' (81 FR 85226). The 2016 guidance described an initial voluntary phase of the QM Reporting Program, with participants reporting data either by product or establishment, through an FDA submission portal. FDA removed one of the four metrics from the 2015 draft guidance and requested submission of the remaining three key metrics: (1) LAR to measure manufacturing process performance; (2) IOOSR to measure laboratory robustness; and (3) PQCR to measure patient or customer feedback and proposed incentives for participation. This guidance also described how FDA intended to utilize the submitted data. Stakeholder comments on the guidance indicated that the FDA-standardized definitions remained a challenge and incentives to participate in a voluntary program needed to be strengthened (*e.g.,* direct collaboration with FDA to develop the program was an example of a strong incentive). Commenters requested a better understanding of the value and utility of the data to be submitted to FDA and how FDA would measure success of the program. Commenters also expressed a preference for a pilot program to gather industry input before implementing a widespread QM Reporting Program.

C. Lessons Learned From FDA's Quality Metrics Pilot Programs

In **Federal Register** notices issued on June 29, 2018, FDA announced the availability of two pilot programs, a Quality Metrics Site Visit Program (83 FR 30751) and a Quality Metrics Feedback Program (83 FR 30748) for any establishment that has a quality metrics program developed and implemented by the quality unit and used to support product and process quality improvement.

The Quality Metrics Site Visit Program offered experiential learning for FDA staff and provided participating establishments an opportunity to explain the advantages and challenges associated with implementing and managing a Quality Metrics program. For example, participants provided feedback in the form of case studies to demonstrate the differences between the metric definitions proposed in the FDA draft guidances and definitions commonly used by industry for the same metrics. They proposed changes to the definitions, justifying why those changes (if any) would be needed. FDA toured the operations of 14 establishments worldwide and engaged with establishments on topics such as: How quality metrics data are collected, analyzed, communicated (*e.g.,* dashboards, business intelligence platforms), and reported throughout the organization in a structured and centralized manner; how management utilizes quality metrics data to monitor the performance of their supply network; how management leverages metrics to promote data-driven decisions; how an establishment implements and monitors continuous improvements based on metrics; how various quality metrics are defined; how actions were taken from observations resulting from quality metrics data reviews; and how efforts to proactively mitigate and prevent shortages are coordinated.

In the Quality Metrics Feedback Program, participating establishments presented their quality metrics programs to FDA staff. The presentations were followed by discussions and knowledge sharing that focused on analytical strategies, exploratory data analyses, data preparation and structure, and visualizations for communication, as well as demonstrations on how FDA plans to analyze the data using advanced analytical techniques (*e.g.,* data/text mining, interactive visualizations), sophisticated statistical methods (*e.g.,* control charts, time series analysis), and machine learning (*e.g.,* predictive analytics, natural language processing). In these discussions, FDA also obtained feedback on industry's anticipated challenges in applying the approach described in FDA's revised draft guidance. Participants had the opportunity to submit their quality metrics data through an FDA submission portal and provide feedback on their user experience. The industry participants represented different sectors of the pharmaceutical industry including innovator drug products, generic drug products, nonprescription (also known as over-the-counter (OTC)) drug products, and biological products.

The dedicated meetings with industry during the two pilot programs that focused on data analytics resulted in the following key lessons learned for FDA, which will inform the direction of the QM Reporting Program:

1. Different industry sectors prefer different metrics due to their individual operations and business dynamics needs. Therefore, it is necessary to implement a program with sufficient flexibility when choosing metrics. Identifying critical practice areas (*e.g.,* manufacturing process performance) and allowing establishments to select appropriate metrics from several options is a more feasible approach.

2. Any metric chosen to be reported should be meaningful to the practice area being measured, and the data collected on that metric should be able to influence decision making about process improvements and capital investments.

3. In some instances, a combination of metrics rather than a single metric is preferred to assess a particular practice area.

4. The majority of participants prefer to report data at an establishment level and have the capability to segment by product, but some participants prefer product-level reporting due to their business structure (*e.g.,* a vertically integrated company).

5. Calculating LAR and PQCR based on the definitions in the 2016 revised draft guidance can result in mathematical discrepancies such as rates over 100 percent or invalid calculations (*i.e.,* dividing by zero)). These discrepancies are caused by inherent variabilities from real-time

operations (*e.g.,* lots may not be dispositioned in the same quarter in which they were started) or how denominators are defined for a specified period of time.

6. While LAR and IOOSR are quality metrics that are routinely monitored by establishments, they are not discerning metrics due to limited variability over time or limited scope and can result in false positives by highlighting nonexistent performance issues. Other metrics should be identified as surrogates for manufacturing process performance and laboratory robustness. Examples include, but are not limited to, right-first-time rate, process capability, and adherence to lead time.

7. The effectiveness of the quality system is a critical component of a QM Reporting Program as evidenced by numerous establishments collecting data around their PQS. Examples include metrics related to the effectiveness of CAPA programs, repeat deviations, maintenance programs, and timeliness.

8. Metrics related to quality culture are important indicators of performance and reliability, but unlike other quality metrics, it is difficult to capture quality culture at an establishment based on numerical metrics alone. Both numerical key performance indicators (KPIs) (*e.g.,* APR timeliness and near misses) and qualitative summaries (*e.g.,* descriptions of management commitment or quality planning) can be used to further understand quality culture.

9. FDA's analysis of the data submitted during the Quality Metrics Feedback Program indicates that the use of statistical quality control applications (*e.g.,* statistical process control and process capability) and machine learning/natural language processing are appropriate and meaningful analytical strategies to assess quality metrics data submitted by establishments.

II. Proposed Direction for an FDA QM Reporting Program

FDA has applied the lessons learned from the pilot programs and other stakeholder feedback toward refining the QM Reporting Program that was presented in the 2016 revised draft guidance. In this section, we summarize a potential direction for the program, and in section III we request input on specific aspects of this approach.

FDA believes that a change in the entities responsible for collecting and submitting quality metrics data is not needed. ''Covered establishments,'' as defined in the 2016 revised draft guidance, are establishments engaged in the manufacture, preparation, propagation, compounding or processing of a ''covered drug product'' (products subject to an approved application under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355) or section 351 of the Public Health Service Act; legally marketed pursuant to section 505G of the FD&C Act (21 U.S.C. 355h) (nonprescription drugs marketed without an approved drug application); or marketed as unapproved finished drug products) or an active pharmaceutical ingredient used in the manufacture of a covered drug product. ''Covered establishments'' include contract laboratories, contract sterilizers, and contract packagers.

FDA is considering changes to other aspects of the QM Reporting Program. Stakeholders have indicated that different industry sectors may prefer different quality metrics. To provide flexibility to manufacturers, FDA would focus less on standardization of quality metrics and definitions. Instead, FDA would identify practice areas that are critical to ensure sustainable product quality and availability and would permit manufacturers to select a metric(s) from each practice area that are meaningful and enable establishments to identify continual improvement opportunities. The metric definitions would not specify how establishments calculate particular metrics. Rather, the reporting establishment would select the most appropriate metric(s) from each practice area and inform FDA how it was calculated. Through the collective feedback gathered from pilot participants, FDA has identified the following four general practice areas as appropriate at this time for the QM Reporting Program: (1) Manufacturing Process Performance, (2) PQS Effectiveness, (3) Laboratory Performance, (4) Supply Chain Robustness. Examples of quality metrics associated with each practice include the following:

1. Manufacturing Process Performance

- *Process Capability/Performance Indices (Cpk/Ppk):* A measure that compares the output of a process to the specification limits and can be calculated as a proportion (*e.g.,* total number of attributes with Ppk greater than 1.33 divided by total number of attributes where Ppk is used). It is important to consider standard deviation measurements using a reasonable sample size.
- *LAR:* A measure of the proportion of lots that were accepted in a given time period. Examples of inputs that can be used to calculate LAR include lots completed, lots dispositioned, lots attempted, lots rejected, lots released, lots approved, abandoned lots, and parallel/backup lots.
- *Right-First-Time Rate:* A measure of the proportion of lots manufactured without the occurrence of a non-conformance. Examples of inputs that can be used to calculate a right-first-time rate include number of deviations, lots dispositioned, lots attempted, number of nonconformances, and lots approved in the first pass.
- *Lot Release Cycle Time:* A measure of the amount of time it takes for the lot disposition process. Lot release cycle time can be calculated with an appropriate unit of measurement such as number of hours or days.

2. PQS Effectiveness

- *CAPA Effectiveness:* A measure of the proportion of CAPA plan implemented and deemed effective (*i.e.,* effectiveness verifications closed as effective). Examples of inputs that can be used to calculate CAPA effectiveness include number of CAPAs initiated, CAPAs closed on time, CAPAs closed as ''effective,'' overdue CAPAs, and CAPAs resulting in retraining.
- *Repeat Deviation Rate:* A measure of the proportion of recurring deviation measures. Examples of inputs that can be used to calculate repeat deviation rate include total number of deviations and number of deviations with the same assignable root cause.
- *Change Control Effectiveness:* A measure of timeliness and effectiveness of implemented changes to GMP facilities, systems, equipment, or processes. Examples of inputs that can be used to calculate this metric include on-time closure of the change, total number of late effectiveness checks, total number of changes initiated, number of changes that are initiated reactively versus proactively, and total number of changes deemed effective.
- *Overall Equipment Effectiveness:* A measure of operating productivity, utilizing planned production time. Overall equipment effectiveness can be calculated using inputs related to availability (*e.g.,* planned production time, operating time), performance (*e.g.,* production capacity), and quality (*e.g.,* production output that does not result in acceptable product).
- *Unplanned Maintenance:* A measure of the proportion of maintenance time that was not planned or scheduled. Examples of inputs that can be used to calculate this metric include total maintenance hours and planned maintenance hours.

3. Laboratory Performance

• *Adherence to Lead Time:* A measure of the proportion of tests in the laboratory that are completed on time according to schedule requirements. Adherence to lead time can be calculated, for example, by tracking initiation and testing turnover time in release and stability tests (*i.e.,* the number of days between the start date and completion date for quality control (QC)); tracking data review and documentation; tracking final result reporting prior to batch disposition; or comparing QC testing completion date against the target date.

• *Right-First-Time Rate:* A measure of the proportion of tests conducted without the occurrence of a deviation. Right-first-time rate as a metric for laboratory performance can be calculated, for example, by tracking the invalid assay rate, the number of assays invalidated due to human errors, or CGMP documentation errors during review.

• *IOOSR:* A measure that indicates a laboratory's ability to accurately perform tests. Examples of inputs that can be used to calculate this metric include total number of tests conducted and total number of out-of-specification results invalidated due to an aberration of the measurement process.

• *Calibration Timeliness:* A measure of a laboratory's adherence to inspecting, calibrating, and testing equipment for its intended purposes as planned. This metric can be measured by tracking calibration criteria and schedules.

4. Supply Chain Robustness

• *On-Time In-Full (OTIF):* A measure of the extent to which shipments are delivered to their destination containing the correct quantity and according to the schedule specified in the order. This metric can be calculated using inputs such as the number of orders shipped, number of past due orders, or number of orders shipped within tolerance.

• *Fill Rate:* A measure that quantifies orders shipped as a percentage of the total demand for a given period. Examples of inputs that can be used to calculate this metric include total number of orders shipped, the number of orders placed, and the number of orders received.

• *Disposition On-Time:* A measure of the proportion of lots in which the disposition was carried out on time. Examples of inputs that can be used to calculate this metric include the total number of lots dispositioned and the total number of lots dispositioned on time.

• *Days of Inventory On-Hand:* A measure of how a company utilizes the average inventory available. It is the number of days that inventory remains in stock.

Given that the majority of participants in the pilot programs prefer to report data at an establishment level, FDA is considering an approach for aggregating and reporting quality metrics data at the establishment level, with the option to segment by manufacturing train, product type, or product level (*e.g.,* application number or product family).

Once the data are submitted, FDA intends to analyze the information with statistical and machine learning methods to provide useful insights for inspection resource allocation. Examples include examination of product trends and clusters; exploratory and time-series analyses for signal identification, thereby monitoring the health of the establishment over time; and utilizing quality metrics data as an input into machine learning models to assist in determining an establishment's overall PQS effectiveness.

III. Request for Comments

We are seeking comment on the following aspects of FDA's proposed direction for its QM Reporting Program. We note that the questions posed in this section are not meant to be exhaustive. We are also interested in any other pertinent information that stakeholders and any other interested parties would like to provide on FDA's QM Reporting Program. FDA encourages stakeholders to provide the rationale for their comments, including available examples and supporting information.

A. Reporting Levels

1. Do you agree that reporting should be aggregated at an establishment level?

2. Would reporting at an establishment level facilitate submission of quality metrics data by contract manufacturing organizations?

3. If you normally assess metrics by product family at an establishment, what are useful definitions of ''product family'' from your industry sector?

B. Practice Areas and Quality Metrics

1. If you think the general practice areas listed in section II of this notice would not meet the objectives of FDA QM Reporting Program, what other practice areas should FDA consider?

2. If FDA were to consider Quality Culture as one of the general practice areas, what are the critical components of a robust quality culture and can any of these components be measured quantitatively? If so, how do you recommend quality culture information be captured as a quantitative metric (*e.g.,* near misses, APR on-time, binary response to Quality Culture survey, or other numerical metrics/KPIs)?

3. Do you think that any of the examples of quality metrics proposed by FDA would not be an appropriate measure for the designated practice area?

4. What other metrics should FDA consider for a designated practice area?

5. FDA is interested in an establishment's experience with implementing process capability and performance metrics. For example, how would you report Cpk and/or Ppk to FDA as part of the QM Reporting Program (*e.g.,* reporting Cpk and/or Ppk for certain products, aggregated at the establishment level)?

6. A metric may need to be changed or adjusted by an establishment to better monitor PQS effectiveness, inform appropriate business strategy, or capture insightful trends, thereby driving continual improvement behaviors. What criteria should be applied to justify changing or modifying a quality metric (by either the establishment or by FDA)? How frequently would you expect changes or modifications to be needed?

7. When would you rely on multiple metrics versus a single metric as an indicator when assessing a particular practice area (*e.g.,* two metrics are considered in combination because one metric influences the other)? What combination of metrics have been meaningful and useful?

C. Other Considerations

1. Are there considerations unique to specific product categories (*e.g.,* generic drug products, OTC drug products, or biological products) that should be addressed in the QM Reporting Program?

2. What would be the optimal reporting frequency for quality metrics data submissions (*e.g.,* monthly, quarterly, or yearly, and segmented by quarter or month)?

3. In instances where a manufacturer is not able to extract domestic data and its submission to FDA contains both U.S. and foreign data, how can these data be submitted to FDA in a manner that would still be informative?

4. Are there any other aspects of FDA's proposed direction for the program that FDA should address in future policy documents?

Dated: February 28, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04972 Filed 3–8–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Medicare Rural Hospital Flexibility Program Performance, OMB No. 0915–0363—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 9, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Medicare Rural Hospital Flexibility Program Performance OMB No. 0915–0363—Revision.

Abstract: This information collection request is for continued approval of the Medicare Rural Hospital Flexibility Program Performance Measures. HRSA is proposing to continue this data collection with minor changes to the organization of the data. The current performance measures are collected electronically in the Performance Improvement and Measurement System which awardees access securely through the HRSA Electronic Handbooks.

The Medicare Rural Hospital Flexibility Program (Flex Program) is authorized by Section 1820 of the Social Security Act (42 U.S.C. 1395i–4), as amended. The purpose of the Flex Program is to enable state designated entities to support critical access hospitals in quality improvement, quality reporting, performance improvement, and benchmarking; to assist facilities seeking designation as critical access hospitals; and to create a program to establish or expand the provision of rural emergency medical services (EMS).

Need and Proposed Use of the Information: For this program, performance measures were developed to provide data useful to the Flex program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Modernization Act of 2010. These measures cover principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) Quality reporting, (b) quality improvement interventions, (c) financial and operational improvement initiatives, (d) population health management, (e) rural EMS integration and (f) innovative care models. In addition to informing the Office's progress toward meeting the goals set in the Government Performance and Results Modernization Act of 2010, the information is important in identifying and understanding programmatic improvement across program areas, as well as guiding future iterations of the Flex Program and prioritizing areas of need and support. This submission includes the addition of minor revisions in the organization of the measures to align with the changes to the organization of the program areas within the Flex Program. The revisions include changes to align with current language and a broadening of scope for some activities. The measures will remain unchanged. For example: Previously, population health improvement activities were combined with rural EMS integration, and these measures will be separated into two distinct program areas. The burden remains unchanged with these changes.

Likely Respondents: Respondents are the Flex Program coordinators for the states participating in the Flex Program. There are currently 45 states participating in the Flex Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement Measurement System (within the Electronic Handbooks system	45	1	45	70	3,150
Total	45		45	70	3,150

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–04980 Filed 3–8–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Vaccines Federal Implementation Plan, Request for Comments; Correction

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of the Assistant Secretary for Health published a document in the **Federal Register** of March 2, 2022, announcing the request for comments for the Vaccines Federal Implementation Plan. The document includes a weblink where the Vaccines Federal Implementation Plan can be found: *https://www.hhs.gov/vaccines/vaccines-national-strategic-plan/vaccines-federal-implementation-plan/index.html#:~:text=The%20Vaccines%20Federal%20Implementation%20Plan%20outlines%20specific%20actions%20that%20federal,National%20Strategic%20Plan%202021%2D2025.&text=The%20public%20comment%20period%20for,2%2C%202022%20at%209%20a.m.*

FOR FURTHER INFORMATION CONTACT: Dr. David Kim, Director, Division of Vaccines, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Room L616, Switzer Building, 330 C St. SW, Washington, DC 20024. Phone: 202–795–7697; Email: *nvp.rfi@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 2, 2022, in FR Doc. 2022–04327, on page 11724, in the second column, correct the subject line Meeting of the Vaccines Federal Implementation Plan to read, ''Vaccines Federal Implementation Plan, Request for Comments''. We also inadvertently omitted the weblink where the implementation plan is located and can be found at *https://www.hhs.gov/vaccines/vaccines-national-strategic-plan/vaccines-federal-implementation-plan/index.html#:~:text=The%20Vaccines%20Federal%20Implementation%20Plan%20outlines%20specific%20actions%20that%20federal,National%20Strategic%20Plan%202021%2D2025.&text=The%20public%20comment%20period%20for,2%2C%202022%20at%209%20a.m.*

Dated: March 2, 2022.

David Kim,

Director, Division of Vaccines, Office of the Assistant Secretary for Health.

[FR Doc. 2022–04937 Filed 3–8–22; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration and Drug Discovery.

Date: April 5, 2022.

Time: 12:00 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: Christine Jean DiDonato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014J, Bethesda, MD 20892, (301) 435–1042, *didonatocj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: International and Cooperative Projects for Global Emerging Leaders Award.

Date: April 6, 2022.

Time: 9:30 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: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Micro Physiological Systems and Implanted Devices.

Date: April 6, 2022.

Time: 12:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Transplantation and Autoimmunity.

Date: April 6, 2022.

Time: 12:00 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: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 443–5779, *prasads@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: March 4, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04984 Filed 3–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 Neurological Disorders and Stroke Special Emphasis Panel; Review of Neurosurgeon K12 Applications.

Date: April 5, 2022.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 3, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04943 Filed 3–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: April 7, 2022.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: The purpose of this meeting is to update the Advisory Board and public stakeholders on the progress of sleep and circadian research activities across NIH, and the activities of Federal stakeholders and professional societies.

Place: Virtual Meeting.

Telephone Access: 1–666–254–5252 (Meeting ID: 161 532 8417 Passcode: 330488).

Virtual Access: https://nih.zoomgov.com/s/1615328417?pwd=Wm52ZmZFMDVaRWE4bGVsOTcrSW1UUT09.

Contact Person: Marishka Brown, BS, MS, Ph.D., Health Scientist Administrator, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institute of Health, 6705 Rockledge Drive, Bethesda 20814–7952, 301–435–0199, *ncsdr@nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 4, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04982 Filed 3–8–22; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; Promoting Bunyavirales Basic Science Research (R01 Clinical Trial Not Allowed).

Date: April 5–6, 2022.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, 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 3E72A, Rockville, MD 20852, (240) 669–5023, *fdesilva@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 3, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04942 Filed 3–8–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) will meet on April 27, 2022, 1:00 p.m.–4:30 p.m. (EDT).

The meeting is open to the public and will include consideration of minutes from the SAMHSA CSAT NAC meeting of August 12, 2021, and a discussion with SAMHSA leadership. It will also cover updates on CSAT activities from the Office of the Director (OD); the Division of Pharmacologic Therapies (DPT); the State Opioid Response Program (SOR); the Division of State

and Community Assistance (DSCA); the Division of Services Improvement (DSI), and a discussion on substance use disorder and oral health.

The meeting will be conducted via Zoom and telephone only and registration is required to participate. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations must notify the contact person, Tracy Goss, CSAT NAC Designated Federal Officer (DFO) on or before April 15, 2022. Up to three minutes will be allotted for each approved public comment as time permits. Written comments received in advance of the meeting will be considered for inclusion in the official record.

To attend virtually, submit written or brief oral comments, or request special accommodation for persons with disabilities, please register on-line at *https://snacregister.samhsa.gov/MeetingList.aspx,* or communicate with the CSAT NAC DFO (see information below).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee website at *https://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council,* or by contacting the DFO.

Council Name: SAMHSA's Center for Substance Abuse Treatment, National Advisory Council

Date/Time/Type: April 27, 2022, 1:00 p.m.–4:30 p.m. EDT, Open

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Email: *tracy.goss@samhsa.hhs.gov*

Dated: March 2, 2022.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2022–04910 Filed 3–8–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0092]

Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use (CBP Form 5125)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 9, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0092 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or the CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use.

OMB Number: 1651–0092.

Form Number: CBP Form 5125.

Current Actions: Extension without change of an existing information collection.

Type of Review: Extension (without change).

Affected Public: Carriers.

Abstract: CBP Form 5125, *Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use,* is used to request the permission of the CBP port director for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels involved in international trade. The applicant must certify on CBP Form 5125 that supplies on board were either consumed, or that all unused quantities remain on board and are adequately secured for use on the next voyage. CBP uses this form to collect information such as the name and identification number of the vessel, ports of departure and destination, and information about the crew members. The information collected on this form is authorized by 19 U.S.C. 1309 and 1317 and is provided for by 19 CFR 10.59(e) and 10.65. CBP Form 5125 is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=5125.*

Type of Information Collection: CBP Form 5125.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 20 minutes (0.33 hours).

Estimated Total Annual Burden Hours: 165.

Dated: March 4, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–04998 Filed 3–8–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–04]

60-Day Notice of Proposed Information Collection: HOPE VI Implementation and HOPE VI Main Street Programs: Funding and Program Data Collection; OMB No.: 2577–0208

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 9, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: HOPE VI Implementation and HOPE VI Main Street Programs.

OMB Control Number: 2577–0208.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–52825–A, HUD–52861, HUD–53001–A.

Description of the need for the information and proposed use: Section 24 of the U.S. Housing Act of 1937, as added by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) and revised by the HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 (Pub.L.108–186, 117 Stat. 2685, approved December 16, 2003), established the HOPE VI program for the purpose of making assistance available on a competitive basis to public housing agencies (PHAs) to improve the living environment for public housing residents of severely distressed public housing projects (or portions thereof); and, beginning in Fiscal Year 2004, to rejuvenate the traditional or historic downtown areas of smaller units of local government. Funds were appropriated for competitive HOPE VI Implementation Notices of Funding Availability (NOFAs) through Fiscal Year 2011.

Remaining HOPE VI Implementation grants account for most of the burden. However, HOPE VI funds are no longer being appropriated. HOPE VI Main Street funds are being funded through the Choice Neighborhoods Initiative appropriations. Currently, there are approximately 35 HOPE VI Implementation grants that remain active and must be monitored by HUD. HUD publishes competitive bi-annual NOFAs for the HOPE VI Main Street program and monitors grants that have been awarded through those NOFAs. These information collections are required in connection with the monitoring of the remaining active HOPE VI Implementation grants and the bi-annual publication on *http://www.grants.gov* of HOPE VI Main Street NOFAs, contingent upon available funding and authorization, which announce the availability of funds provided in annual appropriations for Section 24 of the Housing Act of 1937, as amended.

Eligible units of local government interested in obtaining HOPE VI Main Street grants are required to submit applications to HUD, as explained in each NOFA. The information collection conducted in the applications enables HUD to conduct a comprehensive, merit-based selection process in order to identify and select the applications to receive funding. With the use of HUD-prescribed forms, the information collection provides HUD with sufficient information to approve or disapprove applications.

Applicants that are awarded HOPE VI Implementations grants are required to report on a quarterly basis on their Implementation grant revitalization activities. HOPE VI Implementation grantees do this by sending emails to the HUD grant managers. HUD reviews and evaluates the collected information and uses it as a primary tool with which to monitor the status of HOPE VI projects and programs.

Members of affected public: Public Housing Agencies, Units of Local Government.

Collection	Respondents	Frequency per annum	Responses per annum	Burden per response	Burden per annum	Hourly cost per response	Annual cost
HOPE VI Main Street Application							
Main Street NOFA Narrative Exhibits	5	0.5	2.5	80	200	[1] $58	$11,600
Main Street NOFA 52861 Application Data Sheet	5	0.5	2.5	15	37.5	58	2,175
Main Street NOFA Project Area Map	5	0.5	2.5	1	2.5	58	145
Main Street NOFA Program Schedule	5	0.5	2.5	4	10	58	580
Main Street NOFA Photographs of site	5	0.5	2.5	5	12.5	58	725
Main Street NOFA Five-year Pro-forma	5	0.5	2.5	5	12.5	58	725

Collection	Respondents	Frequency per annum	Responses per annum	Burden per response	Burden per annum	Hourly cost per response	Annual cost
Main Street NOFA Site Plan and Unit Layout	5	0.5	2.5	10	25	58	1,450
Subtotal	35		17.5		300		17,400
Non-NOFA Collections							
Quarterly Reporting	35	4	140	1	140	58	8,120
52825–A HOPE VI Budget updates	40	1	40	1	40	58	2,320
53001–A Actual HOPE VI Cost Certificate	55	1	55	0.5	27.5	58	1,595
Subtotal	130		235		207.5		12,035
Total Burden	165		252.5		507.5		29,435

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Laura Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–04913 Filed 3–8–22; 8:45 am]

BILLING CODE 4210–67–P

[1] Staff filling out these forms typically hold positions equivalent to a GS–14. Therefore, the hourly basic rate used for this calculation is the 2022 hourly rate for a GS–14 Step 9.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–03]

60-Day Notice of Proposed Information Collection: Energy and Performance Information Center (EPIC); OMB Control No.: 2577–0274

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 9, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dawn Smith, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–6488, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Smith.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Energy and Performance Information Center (EPIC).

OMB Approval Number: 2577–0274.

Type of Request: Revision of a currently approved collection.

Form Numbers: N/A—all information collected electronically through the EPIC data system.

Description of the need for the information and proposed use: The EPIC data system automates the previous paper collection of the Five-year Plan and Annual Statement/Budget/Performance and Evaluation (P&E) forms from grantees. These are required forms that were previously collected in hard copy on Forms HUD 50075.1 and HUD 50075.2 under collection OMB control number 2577–0157. These forms collect data on the eventual, and actual use of funds. Electronic collection will enable the Department to aggregate information about the way grantees are using Federal funding. Tracking of the use of Federal funds paid through the Public Housing Capital Fund, the only Federal funding stream dedicated to the capital needs of the nation's last resort housing option, is crucial to understanding how the Department can properly and efficiently assist grantees in meeting this goal as well as assessing the Department's own progress. EPIC also automates the collection of signed documents required by 24 CFR 905 in order to gain access to funds awarded by HUD. These forms are covered under other PRAs. Finally, EPIC allows PHAs to request to use additional funding sources, such as

Operating Funds, for capital fund eligible activities.

The EPIC data system is equipped to collect Physical Needs Assessment (''PNA'') data, should this data be required in the future. This data being in the system coupled with the electronic planning process would streamline grantee planning. The EPIC data system is equipped to collect information about the Energy Performance Contract (''EPC'') process, including the energy efficiency improvements. As the Department moves to shrink its energy footprint in spite of rising energy costs, clear and comprehensive data on this process will be crucial to its success. The EPIC data system is equipped to track development of public housing with Federal funds and through other means, including mixed-finance development.

Respondents: Members of Affected Public: State, Local or Local Governments and Non-profit organizations.

Estimated Number of Respondents: See table below.

Estimated Number of Responses: See table below.

Frequency of Response: 1 See table below.

Average Hours per Response: See table below.

Total Estimated Burdens: See table below.

Form/document	Number of respondents	Frequency	Total responses	Hours per response	Total hours	Cost per hour	Total cost
1 Core Activity	2,8000	1	2,800	2	5,600	$44.10	$246,960
2 5-Yr Plan	2,000	1	2,000	2	4,000	44.10	176,400
3 Annual Stmt/Budget	2,800	3	8,400	1	8,400	44.10	370,440
4 P&E	2,800	0.5	1,475	1	1,475	44.10	65,048
5 Document Management Center	2,800	2	5,600	0.5	2,800	44.10	123,480
6 Additional Capital Resources	15	1	15	0.5	7.5	44.10	331
6 EPC	30	1	30	120	3,600	44.10	158,760
7 Public Housing Development	60	1	60	120	7,200	44.10	317,520
8 Mixed Finance Early Warning	60	1	60	0.33	20	44.10	882
Totals	2,800	Varies	20,440	Varies	33,102.5	44.10	1,459,820

The follow are the specific revisions to the public burden by instrument:

1. The projected labor burden was decreased for Core Activity due to grantees becoming familiar with navigating that aspect of the EPIC system and because submissions after the first reporting cycle for a grant will be an update to the initial submitted report and will require less labor to complete. This reduced hours from the collection 3,250 hours.

2. P&E Reports are no longer required annually, reducing the number of responses and hours by 7,025.

3. RHF data will no longer be collected as that program is being phased out of CFP, reducing the number of collection hours by 25.

4. The Annual Statement/Budget total number of responses dropped by 100 due to the total number of respondents being lowered.

5. EPIC now collects copies of documents previously submitted on paper covered by CFP, Annual Plan and ACC PRA adding collection hours of 2,800.

6. EPIC has added a way for PHA to request to use additional capital resources via EPIC, increasing collection hours of 7.5.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Laura Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–04915 Filed 3–8–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0009; FXIA16710900000–223–FF09A30000]

Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species. We issue these permits under the Endangered Species Act (ESA).

ADDRESSES: Information about the applications for the permits listed in this notice is available online at *https://www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered and

threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*)

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to *https://www.regulations.gov* and search for the appropriate permit number (*e.g.,* 12345C) provided in the following table:

Permit No.	ePermit No.	Applicant	Permit issuance date
75752D		Memphis Zoo	May 18, 2021.
56444D		National Museum of Natural History, Smithsonian Institution	June 4, 2021.
69710D		Virginia Zoological Park	June 8, 2021.
71028D		National Aviary in Pittsburgh	June 11, 2021.
75498D		University of Oklahoma	June 15, 2021.
12767D		Duke University Lemur Center	August 13, 2021.
77243D		University of Michigan Museum of Zoology	August 19, 2021.
42009B		Wright Family LLC, dba J Bar J Ranch	September 7, 2021.
42018B		Wright Family LLC, dba J Bar J Ranch	September 7, 2021.
62698C		Saint Louis Zoo	March 11, 2021.
11160C		University of Texas Austin	November 21, 2021.
693112	PER0019239	University of Michigan Herbarium and Museum of Zoology	November 29, 2021.
77262D		Henry Vilas Zoo	December 3, 2021.
71365D		Caldwell Zoo	December 3, 2021.
77904D		Point Defiance Zoo and Aquarium	December 20, 2021.
49623B		Binder Park Zoo	December 21, 2021.
51221D		American Museum of Natural History	December 22, 2021.

Authorities

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and their implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–04936 Filed 3–8–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKF03000.L12320000.FU0000.LVRDAK010000.21xL5413AR.HAG 15–0234]

Notice of Intent To Establish Recreation Fees on Public Lands in the Central Yukon Field Office, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (FLREA), the Bureau of Land Management (BLM), Central Yukon Field Office, intends to establish expanded (overnight/specialized use) amenity fees at the Five Mile, Arctic Circle, and Galbraith Lake campgrounds along the Dalton Highway, Alaska.

DATES: Comments on the proposed fees must be received or postmarked by April 8, 2022 and include a full name and address.

ADDRESSES: The business plan and information concerning the proposed fees may be reviewed at the Central Yukon Field Office, 222 University Ave., Fairbanks, AK 99709; the Alaska State Office, 222 West 7th Ave., #13, Anchorage, AK 99513; or online at *www.blm.gov/programs/recreation/permits-and-fees/business-plans.* Written comments may be mailed or delivered to the Central Yukon Field Office or emailed to: *CentralYukon@blm.gov* with ''Attn: Field Manager, Notice of Intent to Establish Recreation Fees'' referenced in the subject line.

FOR FURTHER INFORMATION CONTACT: Tim La Marr, Field Manager, Central Yukon Field Office, 222 University Avenue, Fairbanks, AK 99709, by phone at (907) 474–2356, or by email at *CentralYukon@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The FLREA directs the Secretary of the Interior to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The BLM is proposing to establish recreation fees for expanded amenities at the Five Mile (milepost 60), Artic Circle (milepost 115), and Galbraith Lake (milepost 275) campgrounds along the Dalton Highway. This highway provides the only road connection between Interior Alaska and the North Slope.

The BLM partially reconstructed Five Mile and Galbraith Lake campgrounds in 2013 and added additional amenities in 2017. The agency completed construction of Arctic Circle Campground in August 2021. The improvements provided at each of these campgrounds include designated campsites (with picnic tables, tent or trailer space, and fire rings), picnic areas, parking, roadways and trails, and two new concrete restroom buildings. The campgrounds currently maintain accessible toilet facilities, fire rings, and bear-proof refuse containers.

These facilities qualify as sites where visitors can be charged an ''Expanded Amenity Recreation Fee'' under section 3(g) of the FLREA, 16 U.S.C. 6801 *et seq.* Pursuant to FLREA and implementing regulations at 43 CFR 2933, fees may be charged for overnight camping where specific amenities and services are provided. The BLM will post specific visitor fees at each campground. Fees must be paid at the self-service pay station located at the camping areas. Visitors holding the America the

Beautiful—The National Parks and Federal Recreational Lands—Senior Pass and/or Access Pass will be entitled to a 50 percent fee reduction on individual overnight fees.

Effective September 6, 2022, the Central Yukon Field Office will initiate new fee collection at the Arctic Circle, Five Mile, and Galbraith Lake campgrounds unless the BLM publishes a **Federal Register** notice to the contrary. The BLM will begin collecting fees of $10 per campsite per night at Arctic Circle Campground in summer 2022. At Five Mile and Galbraith Lake Campgrounds, the BLM will begin collecting fees of $10 per campsite per night as early as summer 2023, as well as a recreational vehicle sanitary dump station fee of $5 per use at Five Mile Campground. These fees are consistent with other established fee sites in the region, including other BLM-administered sites. In accordance with BLM recreation fee program policy, the Central Yukon Field Office has developed a recreational fee business plan that is available at the addresses in the **ADDRESSES** section. The business plan explains the fee collection process and outlines how fees will be used at the fee sites. Any future adjustments in the fee amounts would be handled in accordance with the business plan, with public notice before any fee increase.

The BLM notified and involved the public at each stage of the planning process for the new fees. The BLM posted written notices of proposed fees at each fee site in June 2019. It announced a 30-day public comment period on the draft business plan on February 5, 2021, through a BLM news release and the BLM website. The draft business plan was publicly available for review and comment on the BLM Alaska business plan website from February 5, 2021, to March 22, 2021.

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: 16 U.S.C. 6803(b) and 43 CFR 2933.

Kevin Pendergast,

Deputy State Director, Resources.

[FR Doc. 2022–05006 Filed 3–8–22; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14400000/LLAZ920000/ET0000/AZA–38142]

Notice of Proposed Withdrawal and Opportunity for a Public Meeting, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the Bureau of Land Management (BLM) and subject to valid existing rights, the Secretary of the Interior proposes to withdraw 2,365.89 acres of public lands in Maricopa County, Arizona, from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and from leasing under the mineral and geothermal leasing laws for up to 5 years while a land management evaluation (LME) is completed. Publication of this notice temporarily segregates the lands for up to 2 years and announces to the public an opportunity to comment and request a public meeting on the proposed withdrawal.

DATES: Comments and requests for a public meeting must be received by June 7, 2022.

ADDRESSES: All comments and meeting requests should be sent to the Bureau of Land Management (BLM) Arizona State Office, 1 North Central Avenue, Suite 800, Phoenix, AZ 85004; faxed to (602) 417–9452; or sent by email to *BLM_AZ_Withdrawal_Comments@blm.gov.* The BLM will not consider comments via telephone calls.

FOR FURTHER INFORMATION CONTACT: Michael Ouellett, Realty Specialist, BLM Arizona State Office, telephone: (602) 417–9561, email at *mouellett@blm.gov;* or you may contact the BLM office at the address noted earlier. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The BLM and the Department of the Air Force (USAF) are engaged in an evaluation of the Barry M. Goldwater Range expansion identified as the Gila Bend Addition, pending processing of the USAF's application for withdrawal of public land for defense purposes under the Engle Act (85 FR 21876, April 20, 2020). The BLM has filed a petition/application requesting the Secretary of the Interior withdraw the following described public lands from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and from leasing under the mineral and geothermal leasing laws for up to 5 years, subject to valid existing rights. The BLM's application does not request reservation of the lands for the USAF for defense purposes. This notice invites members of the public, Federal, State, local and Tribal governments, and other stakeholders to provide the BLM with information relevant to address potential impacts to existing multiple uses and resources from such short-term withdrawal, including but not limited to impacts to mineral and geothermal resources.

Gila and Salt River Meridian, Arizona

T.6 S., R.4 W.,
Sec. 19, lots 3 and 4, E½SW¼;
Sec. 31, lots 1 and 2, E½NW¼.
T.7 S., R.4 W.,
Sec. 5, SW¼SW¼SW¼;
Sec. 6, lots 3 thru 7, SE¼NW¼, E½SW¼, SE¼;
Sec. 7;
Sec. 8;
Sec. 9, S½.

The areas described aggregate 2,365.89 acres.

This petition/application has been approved for publication by the Deputy Secretary of the Interior and therefore constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The use of a right-of-way, interagency agreement, or cooperative agreement would not adequately constrain non-discretionary uses that may result in disturbance of the lands embraced within the Gila Bend Addition.

No additional water rights will fulfill the purpose of this new withdrawal.

There are no suitable alternative sites since these lands are identical to the USAF's BMGR Gila Bend Addition expansion application lands.

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.

Notice is hereby given that an opportunity for a public meeting is

afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Arizona State Director no later than June 7, 2022. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

For a period until March 11, 2024, the lands described earlier will be segregated from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and from leasing under the mineral and geothermal leasing laws, unless the application is denied or canceled, or the withdrawal is approved prior to that date.

This application will be processed in accordance with the regulations set-forth in 43 CFR part 2300.

(Authority: 43 U.S.C. 1714(b)(1) and 43 CFR 2300)

Raymond Suazo,

State Director.

[FR Doc. 2022–04967 Filed 3–8–22; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT929000–212–L14400000.BJ0000; MO#450015384]

Notice of Proposed Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed official filing.

SUMMARY: The plats of survey for the lands described in this notice were filed on June 28, 2021, in the Bureau of Land Management (BLM) Montana State Office, Billings, Montana. This publication provides notice and an opportunity for the public to protest the determinations made on the June 28, 2021, plats of survey.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than April 8, 2022.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Joshua Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: *jalexand@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Alexander. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The survey was executed at the request of the Field Manager, Miles City Field Office, Miles City, Montana and was necessary to exclude a privately owned cemetery from the land description of a proposed BLM land acquisition known as the Lower Musselshell River Acquisition Project. The BLM recorded the plats of survey in the Garfield County Courthouse on June 28, 2021, to create the new land descriptions for the title opinion of the proposed acquisition. After the plats were filed and recorded, the BLM and the private landowner terminated the entire proposed land acquisition. Even though the proposed land acquisition was terminated, this notice is intended to provide the public with an opportunity to protest the BLM's corner determinations and land descriptions as shown on the plats of survey.

The lands surveyed are:

Principal Meridian, Montana

T. 18 N., R. 30 E.
Sec. 18.

A person or party who wishes to protest the filed plats of survey identified earlier must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the date described in the **DATES** section of this notice; If received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

Upon receipt of a timely protest, and after a review of the protest, the Authorized Officer will issue a decision either dismissing or otherwise resolving the protest.

If a notice of protest is received after the date described in the **DATES** section of this notice and the 10-calendar-day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chapter 3)

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2022–04978 Filed 3–8–22; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF000000–L10200000.PH0000–223]

Notice of Colorado's Rocky Mountain District Resource Advisory Council Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Rocky Mountain Resource Advisory Council (RAC) is announcing the 2022 schedule of public meetings.

DATES: The Rocky Mountain RAC will meet twice in 2022 as follows:

- The RAC will host a virtual meeting April 13–14 from 9 a.m. to 4 p.m.
- The RAC will host virtual meetings on August 16 from 9 a.m. to 4 p.m. and on August 18 from 9 a.m. to 12 p.m. The RAC will host a field tour on August 17 from 9 a.m. to 4:30 p.m.

All meetings and the field tour are open to the public.

ADDRESSES: The August 17 field tour will commence at the Royal Gorge Field Office, 3028 E Main St., Canon City, CO 71212. Attendees will then travel to the Penrose Commons OHV Area. The

virtual meetings will be held via the Zoom platform. Registration and participation information will be available on the RAC's web page 30 days in advance of the meetings at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/rocky-mountain-rac.*

FOR FURTHER INFORMATION CONTACT: Maribeth Pecotte, Public Affairs Specialist; BLM Rocky Mountain District Office, 3028 E Main St., Canon City, CO 71212; telephone: (970) 724–3027; email: *mpecotte@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member Rocky Mountain RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Rocky Mountain District of Colorado, including the Royal Gorge Field Office, San Luis Valley Field Office, and Browns Canyon National Monument. Agenda topics for the April 13 and 14 virtual meeting will include a review of roles and responsibilities of RAC members; Field and District Manager updates; a discussion on transient/homeless issues on public lands; presentations on National Environmental Policy Act/land use planning, recreation management, dispersed camping and travel management planning on BLM public lands in Chaffee County, and the Browns Canyon National Monument; updates on the fire and fuels program, livestock trespass in the Rio Grande Natural Area, and the Eastern Colorado RMP; and prework for the San Luis Valley RMP Revision. Agenda items for the August 16 and 18 virtual meeting include Field and District Manager updates; BLM program presentations on cultural resources, grazing, and wetlands restoration in the San Luis Valley; and updates on the Browns Canyon National Monument and the Eastern Colorado RMP. Public comment periods are scheduled for 3 p.m. on April 13 and 14, 3 p.m. on August 16, and 11 a.m. on August 18. Contingent on the number of people who wish to comment during the public comment periods, individual comments may be limited. The public may present written comments to the Rocky Mountain RAC at least 2 weeks in advance of the meeting to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include ''RAC Comment'' in your submission. 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.

Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend must RSVP to the BLM Southwest District Office at least 1 week in advance of the field tours to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this Notice. Individuals who need special assistance, such as sign language interpretation and other reasonable accommodations, should also contact the BLM (see **FOR FURTHER INFORMATION CONTACT**). The field tours will follow current Centers for Disease Control and Prevention COVID–19 guidance regarding social distancing and wearing of masks. Additional information regarding the meetings will be available on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/rocky-mountain-rac.*

Summary minutes for the RAC meetings will be maintained on the RAC's web page and in the Rocky Mountain District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Previous minutes and agendas are also available on the RAC's web page.

(Authority: 43 CFR 1784.4–2)

Stephanie Connolly,

Acting BLM Colorado State Director.

[FR Doc. 2022–04974 Filed 3–8–22; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000.22XR0680GB.RX.N5570007.3000000]

Call for Nominations for the Glen Canyon Dam Adaptive Management Work Group Federal Advisory Committee

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The U.S. Department of the Interior (Interior) proposes to appoint members to the Glen Canyon Dam Adaptive Management Work Group (AMWG). The Secretary of the Interior (Secretary), acting as administrative lead, is soliciting nominations for qualified persons to serve as members of the AMWG.

DATES: Nominations must be postmarked by April 25, 2022.

ADDRESSES: Nominations should be sent to Mr. Daniel Picard, Deputy Regional Director, Bureau of Reclamation, 125 S State Street, Room 8100, Salt Lake City, UT 84138, or submitted via email to *borsha-ucr-gcdamp@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Traynham, Chief, Adaptive Management Group, Resources Management Division, at (801) 524–3752, or by email at *ltraynham@usbr.gov.* Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The Grand Canyon Protection Act (Act) of October 30, 1992, Public Law 102–575, directs the Secretary to consult with the Governors of the Colorado River Basin States and with the general public, including members of the public with certain interests or affiliations, when preparing the requisite criteria and operating plans for Glen Canyon Dam. This group, designated the Glen Canyon Dam Adaptive Management Work Group or AMWG, provides advice and recommendations to the Secretary relative to the operation of the Glen Canyon Dam. The AMWG operates in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix 2.

The duties or roles and functions of the AMWG are in an advisory capacity only. They are to: (1) Establish AMWG operating procedures, (2) advise the Secretary in meeting environmental and cultural commitments including those contained in the Record of Decision for the Glen Canyon Dam Long-Term Experimental and Management Plan Final Environmental Impact Statement and subsequent related decisions, (3) recommend resource management objectives for development and implementation of a long-term monitoring plan, and any necessary research and studies required to determine the effect of the operation of Glen Canyon Dam on the values for

which Grand Canyon National Park and Glen Canyon Dam National Recreation Area were established, including but not limited to, natural and cultural resources, and visitor use, (4) review and provide input on the report identified in the Act to the Secretary, the Congress, and the Governors of the Colorado River Basin States, (5) annually review long-term monitoring data to provide advice on the status of resources and whether the Adaptive Management Program (AMP) goals and objectives are being met, and (6) review and provide input on all AMP activities undertaken to comply with applicable laws, including permitting requirements.

Membership Criteria

Prospective members of AMWG need to have a strong capacity for advising individuals in leadership positions, teamwork, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their stakeholder group. Membership from a wide range of disciplines and professional sectors is encouraged.

Members of the AMWG are appointed by the Secretary and are comprised of:

a. The Secretary's Designee, who serves as Chairperson for the AMWG.

b. One representative each from the following entities: The Secretary of Energy (Western Area Power Administration), Arizona Game and Fish Department, Hopi Tribe, Hualapai Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Southern Paiute Consortium, and the Pueblo of Zuni.

c. One representative each from the Governors from the seven basin States: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

d. Representatives from the general public as follows: Two from environmental organizations, two from the recreation industry, and two from contractors who purchase Federal power from Glen Canyon Powerplant.

e. One representative from each of the following Interior agencies as ex-officio non-voting members: Bureau of Reclamation, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and National Park Service.

At this time, we are particularly interested in applications from representatives of the following:

a. One each from the basin states of New Mexico and Wyoming; and,

b. one each from the Native American Tribes of Hualapai and San Juan Southern Paiute.

After consultation, the Secretary will appoint members to the AMWG. Members will be selected based on their individual qualifications, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and representation of communities of interest. AMWG member terms are limited to 3 years from their date of appointment. Following completion of their first term, an AMWG member may request consideration for reappointment to an additional term. Reappointment is not guaranteed.

Typically, AMWG will hold two in-person meetings and one webinar meeting per fiscal year. Between meetings, AMWG members are expected to participate in committee work via conference calls and email exchanges. Members of the AMWG and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the AMWG, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by 5 U.S.C. 5703.

Nominations should include a resume that provides an adequate description of the nominee's qualifications, particularly information that will enable Interior to evaluate the nominee's potential to meet the membership requirements of the AMWG and permit Interior to contact a potential member. Please refer to the membership criteria stated in this notice.

Any interested person or entity may nominate one or more qualified individuals for membership on the AMWG. Nominations from the seven basin states, as identified in this notice, need to be submitted by the respective Governors of those states, or by a state representative formally designated by the Governor. Persons or entities submitting nomination packages on the behalf of others must confirm that the individual(s) is/are aware of their nomination. Nominations must be postmarked no later than April 25, 2022 and sent to Mr. Daniel Picard, Deputy Regional Director, U.S. Bureau of Reclamation, 125 S State Street, Room 8100, Salt Lake City, UT 84138.

Authority: 5 U.S.C. Appendix 2.

Daniel Picard,

Deputy Regional Director, Alternate Designated Federal Officer, Interior Region 7: Upper Colorado Basin, Bureau of Reclamation.

[FR Doc. 2022–04997 Filed 3–8–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337–TA–1304]

Certain Wet Dry Surface Cleaning Devices; Notice of 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 February 2, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Bissell Inc. of Grand Rapids, Michigan and Bissell Homecare, Inc. of Grand Rapids, Michigan. Letters supplementing the complaint were filed on February 4, 2022, and February 22, 2022. The complaint, as supplemented, 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 wet dry surface cleaning devices by reason of infringement of certain claims of U.S. Patent No. 11,076,735 (''the '735 patent' ''); U.S. Patent No. 11,071,428 (''the '428 patent''); U.S. Patent No. 11,122,949 (''the '949 patent''); U.S. Patent No. 11,096,541 (''the '541 patent''); and U.S. Patent No. 10,820,769 (''the '769 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request 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 Docket Services, 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 March 3, 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, 6, 11, and 13–18 of the '735 patent; claims 1, 2, 5, 10–13, and 15 of the '428 patent; claims 1, 2, 5–7, 11, 14, 15, and 17–20 of the '949 patent; claims 1, 2, 4, 5, 9, 12, 13, 15, 16, and 20 of the '541 patent; and claims 1, 4–7, 10, and 13–16 of the '769 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 ''Tineco's wet dry surface cleaning devices'';

(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 complainants are:

Bissell Inc., 2345 Walker Avenue NW, Grand Rapids, MI 49544.

Bissell Homecare, Inc., 2345 Walker Avenue NW, Grand Rapids, MI 49544.

(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:

Tineco Intelligent Technology Co., Ltd., 108 Shihu West Road, Wuzhong District, Suzhou City, China, 215168.

TEK (Hong Kong) Science & Technology Ltd., Room 1202 Capitol Centre, 5–19 Jardine's Bazaar, Causeway Bay, CN–999077 Hong Kong.

Tineco Intelligent, Inc., 1700 Westlake Ave N, Seattle, WA 98109.

(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 will not be named 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 complainants 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: March 3, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–04933 Filed 3–8–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Interactive Fitness Products Including Stationary Exercise Bikes, Treadmills, Elliptical Machines, and Rowing Machines and Components Thereof, DN 3608*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Peloton, Interactive, Inc. on March 3, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain interactive fitness products including stationary exercise bikes, treadmills, elliptical machines, and rowing machines and components thereof. The complainant names as respondents: ICON Fitness Corp. of Logan, UT; IHF Holdings Inc. of Logan, UT; iFIT Inc. (FKA ICON Health & Fitness, Inc.) of Logan, UT; NordicTrack, Inc. of Logan, UT; Free Motion Fitness, Inc. of Logan, UT. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j). Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States

economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3608'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 4, 2022.

Jessica Mullan,

Attorney-Advisor.

[FR Doc. 2022–04996 Filed 3–8–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–980]

Importer of Controlled Substances Application: Peace of Mind Pharmaceuticals LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Peace of Mind Pharmaceuticals LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 8, 2022. Such persons may also file a written request for a hearing on the application on or before April 8, 2022.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the webpage or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 15, 2021, Peace of Mind Pharmaceuticals LLC, 3003 East 3rd Avenue, Suite B–109A, Denver, Colorado 80206–5110, applied to be registered as an importer of the

following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Pentobarbital	2270	II

The company plans to import the listed controlled substance as bulk active pharmaceutical ingredient (API) for distribution to compounding pharmacies. It is intended for pharmacies who seek to compound the material into dosage units that will be distributed to terminally ill patients for ''medical aid in dying'' (MAID) in U.S. states where MAID is authorized. No other activity for this drug code is authorized for this registration.

Approval of permit applications can occur only when a registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–04926 Filed 3–8–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Oil Pollution Act

Notice is hereby given that the United States of America, on behalf of the Department of the Interior (''DOI'') acting through the U.S. Fish and Wildlife Service, the State of Oregon represented by Oregon Department of Fish and Wildlife (''ODFW''), and the Confederated Tribes of the Siletz Indians (''Tribes''), (DOI, ODFW and Tribes collectively, the ''Trustees''), are providing an opportunity for public comment on a proposed Settlement Agreement (''Settlement Agreement'') among the Trustees and Blue Line Transportation Company, Inc. (''Blue Line'') .

The settlement resolves the civil claims of the Trustees against Blue Line arising by virtue of their natural resource trustee authority under the Oil Pollution Act of 1990, 33 U.S.C. 2702 for injury to, impairment of, destruction of, and loss of, diminution of value of and/or loss of use of natural resources resulting from the January 27, 2001 discharge of approximately 5,800 gallons of No. 6 fuel oil from a fuel tanker, owned by Blue Line, on U.S. Highway 20, near Toledo, Oregon. Under the proposed Settlement Agreement, Blue Line agrees to pay $175,000 to the DOI Natural Resource Damage Assessment and Restoration Fund, $25,000 to compensate for past assessment costs and $150,000 will be used for restoration activities to compensate the public for recreational and aquatic injuries. Blue Line will receive from the Trustees a covenant not to sue for the claims resolved by the settlement.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement. Comments on the proposed Settlement Agreement should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to the CP Settlement Agreement, DJ No. 90–5–1–1–12115. 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 e-mail	*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 Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Settlement Agreement 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 $2.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–04960 Filed 3–8–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: D–12031, Midlands Management Corporation 401(k) Plan; D–12012, The DISH Network Corporation 401(k) Plan and the EchoStar 401(k) Plan; D–12048, The Children's Hospital of Philadelphia Pension Plan for Union-Represented Employees.

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, by April 25, 2022.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, Attention: Application No., stated in each Notice of Proposed Exemption via email to *e-OED@dol.gov* or online through *http://www.regulations.gov* by the end of the scheduled comment period. Any such comments or requests should be sent by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

SUPPLEMENTARY INFORMATION:

Comments:

In light of the current circumstances surrounding the COVID–19 pandemic

caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department, unless otherwise stated in the Notice of Proposed Exemption, within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Midlands Management Corporation 401(k) Plan

Oklahoma City, OK

[Application No. D–12031]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA), in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). The proposed exemption relates to lawsuits and a Chapter 7 Bankruptcy Claim (together, the Lawsuits) filed on behalf of the Midlands Management Corporation 401(k) Plan (the Plan) against former Plan service providers and related parties.[2] The exemption would permit the payment of $8,292,189 to the Plan on December 18, 2018, by Safety National Casualty Corporation (Safety National), the corporate parent of Midlands Management Corporation (Midlands or the Applicant),[3] the Plan sponsor, in exchange for the Plan's assignment to Midlands of the Plan's right to proceeds from the Lawsuits (the Assigned Interests).

The proposed exemption also would permit the potential additional cash payment(s) by Midlands to the Plan if the amount(s) Midlands recovers from the Assigned Interests exceeds $8,292,189. Midlands would be required to immediately transfer the difference to the Plan (*i.e.,* an amount equal to the excess between the Assigned Interest proceeds and $8,292,189 (the Excess Recovery Amount)).[4] If Midlands receives less than $8,292,189 in proceeds from the Assigned Interests, then Midlands would be required to automatically forgive any unrecovered shortfall amount. No Plan assets may be transferred to Midlands in connection with this exemption, if granted, and Midlands would not be permitted to receive or retain any proceeds from the Lawsuits other than from the Assigned Interests. All of the transactions that are the subject of this exemption (the Covered Transactions) and their terms would have to be reviewed and monitored by a qualified, independent fiduciary, who, among other things, must complete and submit a report to the Department confirming that all of

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] In proposing this exemption, the Department is not expressing an opinion regarding the merits of the Plan's lawsuits against its former Plan service providers and related parties, or whether Midlands or related parties met their fiduciary duties with respect to the Plan assets that are the subject of the lawsuit. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) Any fiduciary of the Plan; (b) Midlands; and/or (c) any person or entity related to a person or entity described in (a)–(b).

[3] As described in more detail below, the Restorative Payment was remitted directly to the Plan by Safety National as part of Safety National's 2018 acquisition of Midlands.

[4] However, if there is an excess amount, Midlands may reduce the amount of the excess paid to the plan by the amount of reasonable attorney's fees that Midlands incurred in pursuing the Lawsuits, if the fees were paid to unrelated third parties.

the requirements of this exemption, if granted, have been met.[5]

Summary of Facts and Representations[6]

Background

1. *Midlands.* Midlands is a managing general agent, wholesale broker, program administrator and insurance services provider located in Oklahoma City, Oklahoma.

2. *The Plan.* Midlands sponsors the Plan, which is an individual account defined contribution plan. Plan participants may contribute to their individual Plan accounts through either pretax or Roth deferrals. The Plan is administered by the Retirement Plan Committee (the Committee), which is appointed by Midland's board of directors. As of December 31, 2020, the Plan covered 147 participants and held $15,088,875 in total assets.

3. *Vantage Benefit Administrators.* Up until November 30, 2017, Vantage Benefit Administrators (Vantage) served as the Plan's recordkeeper and third-party administrator. In this capacity, Vantage's responsibilities included providing periodic statements to Plan participants and maintaining records of participant account balances.

4. *The Unauthorized Transfers.* The Applicant represents that, beginning as early as 2013, and continuing through 2017, Vantage caused the unauthorized transfers of Plan assets directly to an account that Vantage used to operate its own business. Vantage caused 180 such unauthorized transfers that totaled in excess of $5.5 million. Vantage concealed the transfers via false account statements and reports.

5. *RSM and the Failure to Monitor.* Beginning in 2013 and continuing through 2016, Midlands retained RSM US, LLP (RSM), an audit, tax, and consulting firm, to audit the Plan on a regular basis. In this capacity, RSM completed annual audit reports of the Plan for the years 2013 through 2016. The Applicant represents that the Committee relied upon RSM's audit findings as a ''critical means'' to monitor Vantage's administration of the Plan. The Applicant further represents that RSM's audit reports ultimately failed to detect the unauthorized withdrawals of Plan assets by Vantage. By Nov. 1, 2017, Vantage's unauthorized withdrawals had reduced total Plan assets to $2,406,654.94, an amount that was approximately $8 million less than the total reported by RSM in an audit report dated two weeks prior (Oct. 13, 2017).

6. *Beasley and the Calculation of Plan Losses.* The Applicant represents that Midlands first became aware of Vantage's unauthorized withdrawals on October 25, 2017. At that time, Midlands engaged Beasley & Company of Tulsa, Oklahoma (Beasley) to investigate and assess Plan losses incurred in connection with Vantage's unauthorized withdrawals. The Applicant represents that Beasley is not affiliated with Midlands, Safety National, or the Plan. Beasley ultimately concluded that the Plan's total losses incurred in connection with Vantage's unauthorized withdrawals was $9,292,189, an amount which includes the principal amount misappropriated by Vantage, plus associated lost interest.[7]

7. *ERISA Lawsuit, Judgment and Bankruptcy.* On December 20, 2017, the Plan and Midlands filed suit against Vantage and its principals, Jeffrey and Wendy Richie, in the United States District Court for the Northern District of Texas in Case No.: 3:17–cv–03459. The complaint alleges that Vantage improperly transferred assets from the Plan. On March 18, 2018, Midlands and the Plan obtained a final judgment (the Judgment) against Vantage and the Richies that awarded $10,170,452.00, plus post judgment interest, including an award of $297,836.75 in attorneys' fees.

On April 19, 2018, an involuntary Chapter 7 bankruptcy petition was filed against Vantage by certain of its creditors in the Northern District of Texas (the Vantage Bankruptcy). The Plan and Midlands have filed a creditor claim against the bankruptcy estate of Vantage. The Vantage Bankruptcy is ongoing.

8. *Other Claims.* In addition to the Claims against Vantage and the Richies, the Plan and Midlands filed Claims against the following entities: (a) Matrix Trust Company (Matrix Trust), formerly known as MG Trust, the Plan's custodian; and (b) RSM and Cole & Reed, P.C. (Cole & Reed), the Plan's former auditors, for misrepresentation, breach of contract, breach of fiduciary duties, violations of state law, aiding and abetting, failure to supervise, and common law fraud. Collectively, the claims against these parties, as well as against Vantage and the Richies, are hereinafter referred to as the Lawsuits.

9. *Plan's Payment from Federal Insurance Company.* On November 5, 2018, the Plan received a $1,000,000 insurance settlement payment in connection with the unauthorized transfers. This settlement payment came via the Plan's crime policy with Federal Insurance Company and was subsequently allocated to participant accounts and reported as ''other contributions'' in the Plan's statement of changes in net assets available for benefits for the year ended December 31, 2018.

10. *Safety National Acquires Midlands.* Before December 18, 2018, Midlands was owned by Caldwell & Partners, Inc. (CAP) and certain individual shareholders of Caldwell Partners, Inc. (the CAP Shareholders). On December 18, 2018, Midlands was acquired by Safety National. Under the Stock Purchase Agreement governing the acquisition, CAP and Midlands merged, with Midlands surviving the merger. Safety National acquired Midlands for a base purchase price of $33 million, minus certain itemized expenses. Among these itemized expenses was an $8,292,189 restorative payment to the Plan to restore losses caused by the unauthorized withdrawals of Plan assets by Vantage (the Restorative Payment). This $8,292,189 Restorative Payment was remitted directly to the Plan by Safety National as part of Safety National's acquisition of Midlands. Midlands currently is a wholly-owned subsidiary of Safety National.

Restitution Made to the Plan

11. *The Restorative Payment.* The Applicant represents that the $8,292,189 Restorative Payment addresses the $9,292,189 in aggregate losses incurred by the Plan, as calculated by the Plan's Independent Fiduciary, minus the $1,000,000 settlement payment that the Plan received from Federal Insurance Company.

12. *The Recovery Rights Agreement.* In exchange for the Restorative

[5] For purposes of this proposed exemption reference to specific provisions of Title I of the ERISA, unless otherwise specified, should be read to refer as well to the corresponding Code provisions.

[6] The Department notes that availability of this exemption would be subject to the express condition that the material facts and representations contained in application D–12031 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there were any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption would cease to apply as of the date of the change.

[7] To calculate lost earnings, Beasley applied the higher of the Plan's actual rate of return as a whole, or the rate of return for the highest performing fund in the Plan's lineup. Beasley represents that, because of market volatility, the Plan's rate of return was negative for the 4th quarter of 2018. Beasley therefore used the fund with the highest rate of return which was the T. Rowe Price Blue Chip Growth fund which had returned 5.32% year-to-date. In addition, Beasley represents that it calculated lost dividends on participant accounts and that the average lost dividends calculation was 4.28%.

Payment, the Plan transferred the Assigned Interests to Midlands pursuant to a Recovery Rights Agreement. As discussed throughout this exemption, the Assigned Interests represent the Plan's rights to receive proceeds from the Lawsuits, with the limitations described below. The Recovery Rights Agreement provides that the Assigned Interests consist of the Plan's rights, title, and interests in and to all financial recoveries payable with respect to the claims underlying the Lawsuits. Under the terms of this proposed exemption, Midlands could not receive or retain any proceeds from the Lawsuits other than from the Assigned Interests.

If Midlands recovers more than $8,292,189 (*i.e.,* the Restorative Payment amount) from the Assigned Interests, Midlands would be required to immediately transfer that excess to the Plan. However, Midlands may reduce the excess amount (but not the Restorative Payment Amount) by the amount of reasonable attorney's fees that Midlands paid to unrelated third parties while pursuing the Assigned Interests. Any amount transferred to the Plan must be accurately and properly allocated to Plan participants' accounts. Conversely, if Midlands recovers less than $8,292,189 from the Assigned Interests (a) the Plan would not be required to repay any amount of the Restorative Payment back to Midlands, and (b) Midlands would be solely responsible for all costs and expenses associated with pursuing the Assigned Interests.

As required under this exemption and as noted above, in entering into the Recovery Rights Agreement, or for any other reason, the Plan did not release any claims, demands, and/or causes of action which it may have or have had against any fiduciary of the Plan, Midland and/or any person or entity related to the Plan or to Midlands. As required under this exemption and as the Applicant represents, the Plan has not and will not incur any expenses or bear any costs in connection with the assignment of its rights under the Recovery Rights Agreement, the Lawsuits, or the exemption request submitted on behalf of the Plan. As required by this exemption and as stated in the Recovery Rights Agreement, the Plan has not and will not pay any interest with respect to the Restorative Payment, and no Plan assets were pledged to secure the Restorative Payment. Finally, this exemption requires the Covered Transactions not to involve any risk of loss to either the Plan or the participants and beneficiaries of the Plan.

13. *Efforts to Recover from Vantage and Other Responsible Parties.* In its initial application for exemptive relief, the Applicant estimated that the ultimate recovery amounts from the Assigned Interests would be as follows: (a) $1.3 million from Matrix Trust; (b) $2.8 million from RSM LLP and Cole & Reed; and (c) between $500,000 and $2 million from the Chapter 7 Estate of Vantage. The Applicant has since supplemented this information and represents that it anticipates recovering up to $4 million total, or approximately 49 percent of the Restorative Payment amount. The Applicant represents that the only remaining claim is the creditor claim against the bankruptcy estate of Vantage, which is not expected to result in any recovery.

Independent Fiduciary Oversight

14. *The Independent Fiduciary.* Midlands retained Prudent Fiduciary Services, LLC (PFS) of West Covina, California, to serve as the independent fiduciary to the Plan with respect to the Covered Transactions. The Applicant represents that the selection of PFS was based solely on PFS's qualifications to serve as a qualified independent fiduciary, and was made after a prudent process, and without regard to whether PFS's views were likely to favor the interests of Midlands, or related parties. PFS provides Independent Fiduciary, ERISA compliance consulting, and expert witness services related to employee benefit plans. PFS represents that its duties and obligations as the Plan's Independent Fiduciary are being carried out by Miguel Paredes. Mr. Paredes is the founder of PFS.

PFS represents and certifies that neither PFS nor Mr. Paredes has, or has had, any material connection or relationship with either Midlands or the Plan that would create a conflict of interest or prevent PFS or Mr. Paredes from carrying out the duties and obligations required of him as Independent Fiduciary to the Plan for the purposes of the Covered Transactions. PFS also represents that the total revenue it has received in each year, from all parties in interest to this exemption, including Midlands and the Plan, represents approximately 0.25% of PFS's total revenue from its prior tax year.

15. In connection with its engagement as Independent Fiduciary, PFS represents the following: (a) No party related to this exemption has, or will, indemnify PFS in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to PFS in performing its duties as Independent Fiduciary on behalf of the Plan; (b) no contract or instrument that PFS enters into with respect to the Covered Transactions that are the subject of the exemption purports to waive any liability under state or federal law for any such violation by PFS; (c) neither PFS, nor any parties related to PFS, have performed any prior work on behalf of Midlands, or on behalf of any party related to Midlands; (d) neither PFS, nor any parties related to PFS, have any financial interest with respect to PFS's work as Independent Fiduciary, apart from the express fees and reimbursement for reasonable expenses paid to PFS to represent the Plan with respect to the Covered Transactions that are the subject of this exemption; (e) neither PFS, nor any parties related to PFS, have received any compensation or entered into any financial or compensation arrangements with Midlands, or any parties related to Midlands; and (f) that PFS has not and will not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations Section 2509.75–4.[8] The Department notes that PFS's continued compliance with each of these representations is a condition of the exemption.

16. *Independent Fiduciary Duties.* As Independent Fiduciary, PFS must: (a) Review the terms and conditions of the Restorative Payment, the Recovery Rights Agreement, and the proposed and final exemption; (b) determine that the Covered Transactions are prudent, in the interest of, and protective of the Plan and its participants and beneficiaries; (c) confirm that the Restorative Payment amount has been made to the Plan and appropriately allocated; (d) continually monitor the Lawsuits and the Assigned Interests on an ongoing basis to determine whether any excess recovery amount should be remitted to and retained by the Plan; and (e) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations Section 2509.75–4.

Additionally, not later than 90 days after the resolution of Midland's efforts to collect proceeds from the Assigned Interests, the Independent Fiduciary must submit a written statement to the Department demonstrating that all of the

[8] ERISA Section 410 provides, in part, that ''except as provided in ERISA sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA Section 410(a)] shall be void as against public policy.''

terms and conditions of the exemption have been met.

17. *The Independent Fiduciary Report.* On September 4, 2020, Mr. Paredes completed his Independent Fiduciary Report (the Independent Fiduciary Report), wherein he determined that the Covered Transactions were prudent, in the interest of, and protective of the Plan and its participants and beneficiaries. In developing his Independent Fiduciary Report, Mr. Paredes represents that he: (a) Conducted a review of documents related to the litigation involving the Plan, as well as the Assigned Interests; (b) reviewed documents related to the terms and conditions of the Recovery Rights Agreement; (c) conducted discussions with Midland's counsel; and (d) reviewed applicable laws and guidance.

In the Independent Fiduciary Report, Mr. Paredes states that the Covered Transactions are reasonable, prudent, and in the best interest of the Plan and its participants and beneficiaries. Mr. Paredes states that the Recovery Rights Agreement presents a recovery scenario that appears to come with no risk of loss to the Plan and its participants and appears overall to be fair and reasonable from the Plan's perspective. Mr. Paredes states that the Plan will not be responsible for, nor bear any of the expenses or costs associated with, the litigation to recover on the Assigned Interests. Mr. Paredes states that the Covered Transactions benefit the Plan's participants and beneficiaries by allowing them to immediately receive the benefit of the Restorative Payment amount, as opposed to having to wait for the Lawsuits to run their normal course, which could be quite lengthy.

Mr. Paredes states that the Plan and its participants and beneficiaries will benefit from provisions in the Recovery Rights Agreement that would protect them if the actual recovery amounts obtained from the Assigned Interests were different than the Restorative Payment amount received by the Plan. In this regard, Mr. Paredes explains that if the actual recovery amount obtained by Midlands from the Assigned Interests were less than the Restorative Payment amount, Midlands would automatically forgive any unrecovered shortfall amount. However, if the actual recovery amount received were more than the Restorative Payment amount, the Plan would receive and retain any such excess recovery amount. As noted above, this proposed exemption would require the Independent Fiduciary to continually monitor the Lawsuits and the Assigned Interests on an ongoing basis to determine whether there is an excess recovery amount that would be remitted to and retained by the Plan.

In sum, Mr. Paredes concludes that, under the terms of the Recovery Rights Agreement, the Covered Transactions allow the Plan to receive the immediate benefit of the Restorative Payment while preserving the right to retain any excess recovery amounts associated with the Assigned Interests. Mr. Paredes states that the terms and conditions of the Recovery Rights Agreement are at least equivalent to, and for all intents and purposes, more favorable than the terms and conditions the Plan would have been able to obtain in an arm's length transaction with an unrelated party. Mr. Paredes further states that, as a result of the Covered Transactions, the Plan's participants and beneficiaries, would not lose any benefits, and the Plan would not be harmed or legally or financially impaired.

ERISA Analysis

18. ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between the plan and a party-in-interest. Midlands, as an employer whose employees are covered by the Plan, is a party-in-interest with respect to the Plan under ERISA Section 3(14)(C). Midlands's contribution of the Restorative Payments to the Plan and the Plan's potential repayment to Midlands with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or an indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The Committee is a party-in-interest with respect to the Plan under ERISA Section 3(14)(A), because it is plan fiduciary. The Restorative Payment to the Plan and the Plan's corresponding assignment of Lawsuit proceeds to Midlands pursuant to the Recovery Rights Agreement violate ERISA Section 406(a)(1)(D).

Statutory Findings

19. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for the Department to make the following findings to grant an exemption under ERISA Section 408(a).

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible. In this regard the Department notes that the Independent Fiduciary must represent the interests of the Plan for all purposes with respect to the Covered Transactions. Further, not later than 90 days after the resolution of Midland's efforts to collect proceeds from the Assigned Interests, the Independent Fiduciary must submit a written statement to the Department demonstrating that the Covered Transactions have met all of the terms and conditions of the exemption.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interests of the Plan and its participants. The Restorative Payment immediately provided the Plan with $8,292,189 in cash. If the Plan did not receive the immediate Restorative Payment, the individual account balances of Plan participants would have remained underfunded in the aggregate by $8,292,189 until the Lawsuits were resolved.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of Plan participants and beneficiaries. Among other things, if Midlands ultimately receives more than $8,292,189 from the Assigned Interests, Midlands must immediately transfer the excess between the Assigned Interest proceeds and $8,292,189 to the Plan. If Midlands receives less than $8,292,189 from the Assigned Interest, then Midlands must automatically forgive any unrecovered shortfall amount.

Summary

20. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Definitions

(a) The term ''Assigned Interests'' means the Plan's right to proceeds from the Lawsuits, which were transferred to Midlands in return for the Restorative Payment.

(b) The term ''Independent Fiduciary'' means Prudent Fiduciary Services, LLC or a successor Independent Fiduciary, to the extent PFS or the successor Independent Fiduciary continues to serve in such capacity, and who:

(1) Is not an affiliate of Midlands and does not hold an ownership interest in Midlands or affiliates of Midlands;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) Is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries at 29 CFR 2509.75–4;

(5) Has not received gross income from Midlands or affiliates of Midlands for that fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Midlands or from affiliates of Midlands while serving as an Independent Fiduciary. This prohibition will continue for a period of six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(c) The term ''Lawsuits'' means the suit filed by the Plan and Midlands against Vantage and its principals, Jeffrey and Wendy Richie in Case No.: 3:17–cv–03459, the bankruptcy claims filed against the Chapter 7 Estate of Vantage, and the claims filed against Matrix Trust, RSM and Cole & Reed, for misrepresentation, breach of contract, breach of fiduciary duties, violations of state law, aiding and abetting, failure to supervise, and common law fraud.

(d) The term ''Midlands'' includes the following entities: (i) Midlands Management Corporation, (ii) the CAP Shareholders, and (iii) Cap Managers, LLC.

(e) The ''Plan'' means the Midlands Management Corporation 401(k) Plan.

(f) The term ''Recovery Rights Agreement'' means the written agreement under which the Plan agreed to transfer its rights to the Assigned Interests in exchange for the Restorative Payment.

(g) The term ''Restorative Payment'' means the $8,292,189 payment that was remitted to the Plan by Safety National as part of Safety National's acquisition of Midlands.

Section II. Covered Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A) and (D) shall not apply to: (1) The December 18, 2018 Restorative payment of $8,292,189 to the Plan by Safety National in exchange for the Plan's assignment to Midlands of the Assigned Interests; and (2) the potential additional cash payment(s) by Midlands to the Plan if the amount(s) Midlands receives from the Assigned Interests exceeds $8,292,189, provided the conditions described below are met.

Section III. Conditions

(a) The Restorative Payment and any Excess Recovery Amount payment, described below, are properly allocated to the Plan's participants' accounts;

(b) If Midlands receives more than $8,292,189 from the Assigned Interests, Midlands must immediately transfer to the Plan the Excess Recovery Amount, which is the difference between the amount of Assigned Interest proceeds and $8,292,189. Midlands may reduce the Excess Recovery Amount (but not the Restorative Payment amount) paid to the Plan only by the amount of reasonable attorney's fees that Midlands incurred in pursuing the Assigned Interests, if the fees were paid to unrelated third parties;

(c) If Midlands receives less than $8,292,189 from the Assigned Interests, then Midlands must automatically forgive any unrecovered shortfall amount, with no Plan assets transferred to Midlands;

(d) In connection with its receipt of the Restorative Payment, the Plan has not and will not release any claims, demands and/or causes of action it may have against: (1) Any fiduciary of the Plan; (2) Midlands; and/or (3) any person or entity related to a person or entity identified in (1)–(2) of this paragraph;

(e) A qualified, independent fiduciary (the Independent Fiduciary), which is unrelated to Midlands and/or its affiliates and is acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA sections 404(a)(1)(A) and (B):

(1) Reviewed the terms and conditions of the Restorative Payment, the Recovery Rights Agreement, the proposed exemption and final exemption;

(2) Determined that the Covered Transactions were prudent, in the interest of, and protective of the Plan and its participants and beneficiaries;

(3) Confirms that the Restorative Payment amount was properly made to the Plan and appropriately allocated;

(4) Monitors the Plan's Assigned Interests on an ongoing basis to ensure that all recovery amounts due the Plan were immediately and properly remitted to the Plan;

(5) Monitors and ensures that legal fees paid in connection with the Assigned Interests and the Lawsuits are limited to reasonable attorney's fees paid to unrelated third parties that Midlands incurred in pursuing recoveries from the Assigned Interests and the Lawsuits;

(6) Has not entered into any agreement or instrument that violates ERISA section 410 or Department's Regulations codified at 29 CFR Section 2509.75–4;

(f) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party associated with this exemption, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation;

(g) Not later than 90 days after the resolution of Midlands' collection efforts with respect to the Assigned

Interests, the Independent Fiduciary must submit a written statement to the Department confirming and demonstrating that all of the requirements of the exemption have been met;

(h) If an Independent Fiduciary resigns, is removed, or is unable to serve as an Independent Fiduciary for any reason, the Independent Fiduciary must be replaced by a successor entity that: (1) Meets the definition of Independent Fiduciary detailed above in Section II(b); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set out in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible before the appointment of a successor Independent Fiduciary, the Applicant must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information including the qualifications of the successor Independent Fiduciary;

(i) Neither the Independent Fiduciary, nor any parties related to the Independent Fiduciary, have performed any prior work on behalf of Midlands, or on behalf of any party related to Midlands;

(j) Neither the Independent Fiduciary, nor any parties related to the Independent Fiduciary, have any financial interest with respect to the Independent Fiduciary's work as Independent Fiduciary, apart from the express fees and reimbursement for reasonable expenses paid to the Independent Fiduciary to represent the Plan with respect to the Covered Transactions that are the subject of this exemption;

(k) Neither the Independent Fiduciary, nor any parties related to the Independent Fiduciary, have received any compensation or entered into any financial or compensation arrangements with Midlands, or any parties related to Midlands;

(l) The Plan pays no interest in connection with the Restorative Payment;

(m) No Plan assets are pledged to secure the Restorative Payment;

(n) The Covered Transactions do not involve any risk of loss to either the Plan or its participants and beneficiaries;

(o) The Plan has no liability for the Restorative Payment, even in the event that the amount recovered by Midlands with respect to the Assigned Interests is less than $8,292,189;

(p) The Plan does not incur any expenses, commissions or transaction costs in connection with the Covered Transactions and this exemption;

(q) Midlands may not receive or retain any proceeds from the Lawsuits other than from the Assigned Interests;

(r) All terms of the Covered Transactions are and will remain at least as favorable to the Plan as the terms and conditions the Plan could obtain in a similar transaction negotiated at arm's-length with unrelated third parties; and

(s) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate.

Effective Date: If granted, the exemption will be in effect as of December 18, 2018.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the notice of proposed exemption (the Notice) include participants and beneficiaries of the Plan. The Applicant will provide notification to interested persons, and to representatives of all the parties to the litigation described above, by electronic mail and first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will include a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and/or to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) calendar days from the date of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as a name, address, Social Security number, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

Further Information Contact: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

The DISH Network Corporation 401(k) Plan and the EchoStar 401(k) Plan

Located in Englewood, CO

[Application No. D–12012]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). The proposed exemption would permit the acquisition and holding by the DISH Network Corporation 401(k) Plan (the DISH Plan) and the EchoStar 401(k) Plan (the EchoStar Plan) of subscription rights that were issued on November 26, 2019, by the DISH Network Corporation (DISH or the Applicant), a party in interest with respect to the Plans.[9]

Summary of Facts and Representations [10]

The Parties

1. *DISH and EchoStar.* DISH is a live-linear television programming provider. Charles W. Ergen is the Chairman and controlling shareholder of DISH. In addition, Mr. Ergen beneficially owns greater than 50% of the total combined voting power of EchoStar Corporation (EchoStar). EchoStar is a global provider of satellite communications solutions.

2. *The DISH Plan.* The DISH Plan is a defined contribution 401(k) plan, with $683,135,811.95 in total assets and 18,936 participants, as of November 25, 2019. In the past, DISH made discretionary employer profit sharing contributions to the DISH Plan, in the form of DISH common stock. The DISH common stock (DISH Stock) is held within a DISH Stock fund (the DISH Stock Fund) in the DISH Plan. Each

[9] For purposes of this proposed exemption, references to the provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975.

[10] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application D–12012 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change.

participant eligible to receive a discretionary profit-sharing contribution under the terms of the DISH Plan is allocated a balance in the DISH Stock Fund when the contribution is made. As of November 25, 2019, the DISH Plan held 3,333,185.696 shares of Class A DISH common stock, with a fair market value of $118,261,428.49, representing approximately 1.3% of DISH's 254,626,165 outstanding shares of Class A common stock.

3. *The EchoStar Plan.* The EchoStar Plan is a defined contribution 401(k) Plan, with $496,363,649.64 in total assets and 2,572 participants, as of November 25, 2019. As of that same date, the EchoStar Plan held 167,634.586 shares of Class A DISH common stock within the DISH Stock Fund of the EchoStar Plan, with a fair market value of $5,938,915.24. The DISH Stock held by the EchoStar Plan, represented approximately 0.03% of DISH's 254,626,165 outstanding shares of Class A common stock.

The Rights Offering

4. On November 7, 2019, DISH announced its intent to conduct a rights offering (the Offering), for general corporate purposes, including investments in DISH's wireless business. Under the Offering, all holders of record of DISH's Class A and B common stock and outstanding convertible notes (as of November 17, 2019 (the Record Date)), would automatically receive certain rights (the Rights), at no charge. Specifically, each holder would receive one (1) Right for every 18.475 shares of DISH Class A or B common stock, or Class A common stock equivalent (as applicable). [11] Fractional Rights were not issued. If an eligible holder would have received a fractional Right, DISH rounded down to the nearest whole number.

5. A total of 29,834,992 Rights to purchase 29,834,992 Class A shares of DISH common stock were issued in the Offering. Each Right entitled the holder to purchase one share of DISH's Class A Common Stock for $33.52 per whole share of Class A Common Stock.[12] Rights could only be exercised in aggregate for whole numbers of shares of DISH's Class A Common Stock. DISH did not include an oversubscription offer to purchase additional shares of Class A Common Stock that may have remained unsubscribed as a result of any unexercised Rights after the expiration of the Offering.

6. On November 22, 2019, DISH distributed the Rights to registered holders of eligible securities. According to the Applicant, the National Association of Securities Dealer Automated Quotation system (NASDAQ) determined that shares of DISH Class A common stock would continue to trade with the right to receive the Rights until November 25, 2019 (the Ex-Date).[13]

7. The Applicant states that all eligible holders held the Rights until the Rights expired, were exercised, or were sold. A holder had the right to exercise some, all, or none of its Rights. The Rights could be exercised commencing on November 22, 2019, and elections to exercise the Rights had to be received by the subscription agent (Computershare Trust Company, N.A.) by 5:00 p.m., Eastern Time, on December 9, 2019. All exercises of the Rights by Rights holders were irrevocable.

8. The Rights were transferable, and they began to trade on the NASDAQ Global Select Market on a ''when-issued'' basis under the symbol ''DISHV'' beginning on November 22, 2019, and on a ''regular way'' basis under the symbol ''DISHR'' beginning on November 25, 2019, the Ex-Date.[14] The Rights continued to trade until the trading deadline at the close of business on December 9, 2019. According to data reported by FactSet, the volume-weighted average price was $0.33 per Right, based on the sale of 15,237,856 Rights during the trading period.

9. The Applicant represents that approximately 81% of the 29,834,992 Rights to purchase 29,834,992 Class A shares of DISH common stock issued in the Offering were exercised and all shareholders of DISH and EchoStar, including the Plans, were treated exactly the same. In addition, the Applicant represents that DISH received gross proceeds of approximately $1 billion from the Offering, and DISH used or will use these proceeds for general corporate purposes.

10. The Applicant represents that each Plan was amended to: (a) Allow for the temporary acquisition and holding of the Rights, pending their orderly disposition; (b) confirm that participants were not entitled to direct the holding, exercise, sale or other disposition of the Rights; and (c) authorize the designated independent fiduciary to exercise discretionary authority with respect to the holding, exercise, sale or other disposition of the Rights.

11. The DISH Plan received 180,084 Rights in connection with the Offering, and the EchoStar Plan received 9,073 rights in connection with the Offering. All decisions regarding the holding and disposition of the Rights by each Plan were made in accordance with the Plan provisions, by a qualified independent fiduciary acting solely in the interest of Plan participants.

The Independent Fiduciary

12. Under the terms of an agreement, dated November 15, 2019 (the Independent Fiduciary Agreement), the DISH Plan's 401(k) Committee and the Investment Committee for the EchoStar Plan, appointed Newport Trust Company (Newport) to act as the independent fiduciary (the Independent Fiduciary) on behalf of the Plans, in connection with the Offering and with respect to the subject exemption request. Newport's responsibilities included determining whether and when to exercise or sell each Right held by the DISH Plan and the EchoStar Plan.

13. Newport is a New Hampshire state-chartered trust company with $90 billion in assets under management and administration as of September 30, 2019. Newport represents that it understands and acknowledges its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plans in connection with the Offering.

14. Further, Newport represents that it is independent of and unrelated to DISH and EchoStar, and that it has not directly or indirectly received any compensation or other consideration for its own account in connection with the Offering, except for compensation from DISH in accordance with and for performing services described in the Independent Fiduciary Agreement. Newport represents that the revenue it has received (or expected to receive) did not exceed 1% of its 2018 annual revenue.

15. Newport was chosen to act as Independent Fiduciary by the 401(k) Committee with respect to the DISH Network Corporation 401(k) Plan, and the 401(k) Investment Committee for the EchoStar 401(k) Plan with respect to the EchoStar 401(k) Plan (the Committees),

[11] According to the Applicant, DISH has no other classes of stock with outstanding shares. DISH's certificate of incorporation authorizes the issuance of Class C shares and preferred shares of stock in addition to Class A and Class B shares, but there are no outstanding shares of Class C common stock or preferred stock.

[12] The Applicant represents that the closing price of DISH Stock on November 21, 2019 was $35.91.

[13] The Applicant represents that if Holder A sold shares of Class A DISH common stock on November 24 to Holder B, who retained the shares through the end of the Offering, then Holder B would receive the Rights. Holder A would not receive Rights because it sold the shares before the Ex-Date for the Offering.

[14] According to the Applicant, the term ''when-issued'' refers to transactions involving securities that have been announced but not yet issued. The transactions only settle after the security has been issued. The Applicant also states that ''regular-way'' trading is conducted on the normal timeframe for purchases and sales of securities on an exchange.

the Plan fiduciaries responsible for making such decisions. According to the Committees, Newport's selection was based solely on its qualifications to serve as an independent fiduciary after a prudent process, and without regard to whether Newport's views were likely to favor the interests of DISH Network and EchoStar, or related parties.

Newport represents that: (a) Neither it nor any related parties have performed any work in connection with the Rights Offering on behalf of the DISH Network and/or its related parties; (b) it does not have any financial interest with respect to the work as the Independent Fiduciary for the Rights Offering, apart from its express fees for work as the Independent Fiduciary for the Plans; (c) neither it nor any related parties have received any compensation or entered into any financial or compensation arrangements with the DISH Network and related parties; and (d) it has not entered into any agreement or instrument regarding the Rights Offering that violates ERISA Section 410 or the Department's regulations at 29 CFR Section 2509.75–4.[15] Newport also represents that it has not been indemnified, in whole or in part for negligence of any kind, or for any violation of state or federal law in performing its duties and responsibilities to the Plans under the terms of the requested exemption, and that there is no cap or limitation on its liability for negligence of any kind in performing its duties as the independent fiduciary for the Plans.

16. As stated in Newport's independent fiduciary report, dated January 10, 2020 (the Independent Fiduciary Report), Newport conducted a due diligence process in evaluating the Offering on behalf of the Plans. This process included discussions and correspondence with representatives of the Plans, DISH, DISH's counsel, and representatives of the Plans' trustees of the Plans, that enabled Newport to better understand a number of important elements related to the Offering. Newport also reviewed publicly-available information and information provided by DISH.

17. With regard to the Offering, Newport represents that it considered four options on behalf of the Plans: (a) To continue holding the Rights within the DISH Stock Funds in the Plans; (b) to exercise all of the Rights to acquire DISH Stock; (c) to sell all of the Rights on the NASDAQ Global Select Market at the prevailing market price; or (d) to sell a portion of the Rights and use the proceeds to exercise the remaining Rights to purchase Class A shares of DISH common stock.

18. Newport represents that although it considered the advantages and disadvantages of these options, it determined that selling some of the Rights and exercising other Rights would expose the Plans to significant risk and uncertainty. Newport also determined that the process of exercising the Rights would have taken several days, during which the market price of the Rights and DISH Stock could have declined to a level below the $33.52 exercise price for the Rights. Therefore, Newport elected not to sell some of the Rights and exercise others.

19. Further, Newport represents that it could not exercise all of the Rights because, as with any participant-directed individual account plan, the Plans did not maintain significant pools of uninvested cash that could be used to purchase the additional shares of DISH Stock. Exercising all of the Rights, according to Newport, would have required the liquidation of other investments held within participant accounts to generate cash necessary for the purchase of the additional DISH Stock. Doing so, according to Newport, would have been: (a) Inconsistent with the provisions of the Plans calling for individually-directed investment of participant accounts; and (b) a time-consuming process that would have taken several days and exposed the Plans to the same risks and uncertainties that selling some of the Rights and exercising others would have imposed.

20. Newport represents that it ultimately decided to sell the Rights to capture their value quickly and then to redeploy the proceeds into the participants' accounts. Newport represents that although the Plans would incur some transaction costs through this option ($0.005 per Right traded), selling the Rights would be prudent given that the Plans did not have sufficient cash to exercise the Rights and the other options carried too many risks. Therefore, Newport concluded that selling the Rights was in the interests of the Plans and the Plans' participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the Plans.

Sale of the Rights

21. According to the Applicant, Fidelity informed Newport at 10:20 a.m. on November 26, 2019, that the Rights were available for trading. Newport sold the EchoStar Plan's 9,073 Rights in ''blind transactions'' on the NASDAQ Global Select Market on November 26, 2019, and realized an average selling price of $1.43 per Right.

22. Because of the amount of Rights the DISH Plan received, Newport directed the sale of the DISH Plan's Rights over the course of three days to avoid negatively impacting the market price of the Rights through sale activity. For the DISH Plan, Newport directed: (a) The sale of 17,110 Rights on November 26, 2019, at an average sale price of $1.41; (b) the sale of 122,799 Rights on November 27, 2019, at an average price of $1.25; and (c) the sale of 40,175 Rights on November 29, 2019, at an average price of $0.72. According to the Applicant, each of the DISH Plan's sales was conducted in blind transactions on the NASDAQ Global Select Market.

23. The Applicant represents that no brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights. With respect to the sale of the Rights, the DISH Plan paid $900.42 in commissions and $4.29 in SEC fees, and the EchoStar Plan paid $45.37 in brokerage commissions and $0.27 in SEC fees.

24. The Applicant represents that the total net proceeds generated in connection with the sale of the Rights was $205,319.79 for the DISH Plan, and $12,930.57 for the EchoStar Plan. According to the Applicant, the proceeds were invested in accordance with participants' elections for the investment of their contributions to the Plans, or to the extent the participants had not made investment elections, in the Plans' default investment vehicles.

ERISA Analysis

25. ERISA Section 406(a)(1)(E) provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if he or she knows or should know that such transaction constitutes the acquisition, on behalf of the plan, of any employer security in violation of ERISA Section 407(a). ERISA Section 407(a)(1)(A) provides that a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Under ERISA Section 407(d)(1), ''employer securities'' are defined, in relevant part, as securities issued by an employer of employees covered by the plan, or by an

[15] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA Section 410(a)] shall be void as against public policy.''

affiliate of the employer. ERISA Section 407(d)(5) provides, in relevant part, that ''qualifying employer securities'' are stock or marketable obligations. ERISA Section 406(a)(2) provides that a fiduciary of a plan shall not permit the plan to hold any employer security if he or she knows or should know that holding such security violates ERISA Section 407(a).

26. The Applicant represents that the Rights would not be considered ''qualifying'' employer securities because they are not stock, marketable obligations, or interests in a publicly-traded partnership. Therefore, the Applicant requests retroactive exemptive relief from ERISA Sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) for the acquisition and holding of the Rights by the Plan in connection with the Rights Offering.

Statutory Findings

27. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

a. *The Proposed Exemption Is* ''*Administratively Feasible.*'' The Department has tentatively determined that the proposed exemption is administratively feasible since, among other things, a qualified independent fiduciary, Newport, must represent the Plans for all purposes with respect to the acquisition, holding and sale of the Rights, and documented its findings in a written report to the Department. The Department notes that, under the terms of this proposed exemption, Newport may not be indemnified, in whole or in part, for an act of negligence by Newport in performing its duties and responsibilities to the Plans.

b. *The Proposed Exemption Is* ''*In the Interests of the Plan.*'' The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of the Plans since, among other things: (a) The Rights were automatically issued to all holders of Class A and B DISH common stock (and holders of convertible notes convertible to Class A DISH common stock) as of the Ex- Date, including the Plans; and (b) the Plans held and disposed the Rights, and realized their fair market value in blind transactions on the open market.

c. *The Proposed Exemption Is* ''*Protective of the Plan.*'' The Department has tentatively determined that the proposed exemption is protective of the rights of participants and beneficiaries since, among other things: (a) The acquisition and holding of the Rights occurred as a result of the Rights Offering which was approved by the DISH Board of Directors, in which all shareholders of DISH and EchoStar, including their Plans, were treated exactly the same; (b) the acquisition of the Rights by the Plans occurred on the same terms available to other eligible holders of DISH Stock and convertible notes, and the Plans received the same proportionate number of Rights as such other eligible holders; (c) the Plans did not pay any fees or commissions in connection with the acquisition or holding of the Rights; (d) all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with the provisions of the Plans, by Newport, the Independent Fiduciary, which concluded that the sales were in the interest of the Plans and their participants; and (e) Newport concluded that the Plans' holdings and participant accounts had increased. In this regard, net of brokerage and SEC fees, the DISH Plan received $205,319.79 and the EchoStar Plan $12,930.57, for a total of $218,250.36 between the Plans.

Summary

30. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

Proposed Exemption

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions imposed by ERISA section 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A), and Code sections 4975(c)(l)(A) and (E), by reason of section 4975(c)(1) of the Code, will not apply to the past acquisition and holding by the Plans of certain subscription rights (the Rights) that were issued by the DISH Network Corporation (DISH or the Applicant) to the individually-directed accounts of participants in the DISH Network Corporation 401(k) Plan (the DISH Plan) and the EchoStar 401(k) Plan (the EchoStar Plan; together, the Plans) during a rights offering (the Rights Offering) that occurred from November 26–29, 2019, provided that the conditions described in Section II below have been met.

Section II. Conditions

(a) The Plans acquired the Rights as a result of an independent act of DISH as a corporate entity, and without any participation on the part of the Plans;

(b) The acquisition and holding of the Rights occurred as a result of a rights offering approved by the DISH board of directors, in which all shareholders of DISH, including the Plans, were treated exactly the same;

(c) The acquisition of the Rights by the Plans occurred on the same terms made available to other eligible holders of DISH Stock and convertible notes, and the Plans received the same proportionate number of Rights as such other eligible holders;

(d) The Plans did not pay any fees or commission in connection with the acquisition or holding of the Rights. The Plans paid commissions and SEC fees to third parties solely in connection with the sale of the Rights;

(e) All decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with the provisions of the Plans, by Newport, acting solely in the interest of the participants of the Plans as the qualified independent fiduciary (the Independent Fiduciary);

(f) As the Independent Fiduciary, Newport:

(1) Has not been indemnified, in whole or in part, for negligence of any kind or for any violation of state or federal law in performing its duties and responsibilities to the Plans under the terms of this proposed exemption, and there is no cap or limitation on its liability for negligence of any kind in performing its duties as the Independent Fiduciary for the Plans;

(2) Has not entered into any agreement or instrument that violates ERISA Section 410 or the DOL's regulations at 29 CFR Section 2509.75–4; and

(3) Has acknowledged that there is no instrument or contractual arrangement that purports to waive or release it from liability for any violation of state or federal law; and

(g) All the facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: The proposed exemption, if granted, will be in effect from November 26, 2019, the date that the Plans received the Rights, until November 29, 2019, the last date the Rights were sold by the Plans on the NASDAQ Global Select Market.

Notice to Interested Persons

Notice of the proposed exemption (the Notice) will be given to all interested persons within 15 days of the date of publication of the Notice in the **Federal Register**, by first class U.S. mail to the last known address of all such

individuals. It will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 45 days of the publication of the Notice in the **Federal Register**. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

Further Information Contact: Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

The Children's Hospital of Philadelphia Pension Plan for Union-Represented Employees

Located in Philadelphia, PA

[Application No. D–12048]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).[16] This proposed exemption permits the sale (the Sale) of certain illiquid private fund interests (the Interests) by the Children's Hospital of Philadelphia Pension Plan for Union-Represented Employees (the Plan or the Applicant) to the Children's Hospital of Philadelphia Foundation, provided certain conditions are met.

Summary of Facts and Representations [17]

Background

1. The Children's Hospital of Philadelphia (CHOP) is a hospital devoted exclusively to the care of children, with its primary campus located in Philadelphia, Pennsylvania. The Children's Hospital of Philadelphia Foundation (the Foundation) is the parent entity of CHOP and supports the activities of CHOP through fund-raising and endowment-management. CHOP and the Foundation are both Pennsylvania nonprofit corporations and Code Section 50l(c)(3) charitable organizations. They are separate legal entities but are related because the members of the Board of Trustees of each entity (together, the Boards of Trustees, and individually the CHOP Board and the Foundation Board) are comprised of the same individuals who meet and often act jointly.

2. The Plan is a noncontributory defined benefit plan that covers employees under a collective bargaining agreement between CHOP and the National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO District 1199C. As of August 31, 2021, the Plan covered 1,636 participants and held $102,000,000 in total assets.

3. The Plan is administered by the Members of the Administrative Committee of the Children's Hospital of Philadelphia (the Committee). The Committee is comprised of nine individual members who concurrently serve as officers and employees of CHOP. The Committee has responsibility for the operation and administration of the Plan, determines the appropriateness of the Plan's investment offerings, and monitors the Plan's investment performance.

The Interests

4. The Interests that are proposed to be sold consist of private fund limited partnership interests and one illiquid ''side pocket'' portion of an original hedge fund investment.[18] The Interests consist of 18 funds that are spread among 14 managers and have varying durations, ranging from ''currently in liquidation'' to December 2022. The 18 Funds can be further broken down into 24 Fund Vehicles. The Plan's investment duration in the Interests ranges from 7–18 years. As of December 31, 2019, the Interests represented approximately 8.5% of the Plan's assets. The Foundation also currently is invested in all of the same Interests, except for the Adams Street Interests.[19]

The following table provides a complete list of the Interests, including the fair market value of each Interest, as of May 21, 2021:

Interest	FMV
Adams Street U.S. Fund	$990,321
Adams Street Non U.S. Fund	440,058
Adams Street Direct Fund	275,554
Charterhouse IX	130,737
FORTRESS CREDIT OPPS	123,933
FORTRESS CREDIT OPPS II	344,955
Hellman & Friedman VII	136,119
H&F Shield	0.00
H&F Willis AV III	0.00
H&F Wand AIV III	35,218
H&F EFS AIV III	36,381
IDG–ACCEL CHINA CAP	771,450
IDG ACCEL CHINA II	601,354
IDG–ACCEL CHINA GRTH FD III	757,027
NORDIC CAPITAL VII	5,781
SANKATY COPS IV	16,899
SIGULER GUFF BRIC II	218,477
VARDE X	202,691
ENERGY CAPITAL PARTNERS II–B	42,297
BEP LEGACY C	4,404
LIME ROCK RESOURCES	0.00
LIQUID REALTY PARTNERS IV TOTAL	38,559
METROPOLITAN REAL ESTATE PARTNERS GLOBAL	45,034
VARDE INVESTMENT PARTNERS (VIP)	549,790

The Interests include investments in private equity funds, real estate funds, and natural resource funds. The Applicant represents that the Plan invested in the Interests because each Interest provided significant risk-adjusted rate of return potential and appropriate investment diversification.

As noted in the chart, it is possible that three of the twenty-four Interests will be appraised as having no value. However, this proposed exemption requires the Independent Fiduciary to separately consider the likelihood that one or more of these three Interests will receive trailing distributions, and to attribute a positive value as appropriate. The Independent Fiduciary's analysis regarding whether or not any positive value is attributable to each of these three Interests must be included in the Independent Fiduciary's written report to the Department, as described below.

[16] For purposes of this proposed exemption, references to the provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above. Accordingly, the Applicant is responsible for ensuring compliance with any other laws applicable to this transaction.

[17] The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in Application D–12048 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change.

[18] As referenced below, Varde VIP represents the illiquid ''side pocket'' portion of an original hedge fund investment.

[19] The Department notes that a fiduciary to a plan must not rely upon or otherwise depend upon the participation of the plan in a particular investment in order for the fiduciary (or persons in which the fiduciary has an interest) to undertake, or to continue, his or her share in the same investment.

Prior Exemption Request

5. On October 1, 2018, the Plan, along with the Children's Hospital of Philadelphia Pension Account Plan (the Non-Union Plan) [20] submitted a request for exemptive relief that was substantially similar to the relief requested herein (the Prior Exemption Request). At the time the Prior Exemption Request was filed, the Board of Trustees had recently approved the termination of the Non-Union Plan. In connection with its planned termination, the Non-Union Plan sought to liquidate its noncash assets, including the Interests, as a means to increase liquidity and fund lump sum payments and annuity purchases for participants. At the time that the Prior Exemption Request was filed, the assets of the Plan and the Union Plan were both held in the Master Trust, where each Plan held a proportional ownership stake in the Interests.

The Department's Denial of the Prior Exemption Request

6. In a letter dated August 25, 2020, the Department denied the Prior Exemption Request (the Denial Letter). As stated in the Denial Letter, the Department was not able to find that the Prior Exemption request was in the interest of, and protective of, the participants and beneficiaries of the Plan and the Non-Union Plan. In this regard, the Denial Letter noted that the independent fiduciary, acting on behalf of the Plan and the Non-Union Plan, had engaged an independent appraiser pursuant to an agreement that limited the appraiser's liability for acts of negligence. The Denial Letter further stated that the appraiser's insistence on limiting its responsibility for negligent work, and the independent fiduciary's acceptance of this limitation, raised concerns regarding whether sufficient protections were in place to warrant the requested exemption.

7. In the context of a prohibited transaction exemption, the Department expects independent fiduciaries to exercise special care when hiring an appraiser to value hard-to-value assets, and those appraisers to perform their work in accordance with expert standards and without special releases from liability for work that fails to adhere to those standards. Adequate protection for the plan in this context requires an appraiser and its work product to adhere to a high standard of care, diligence, and accuracy. Liability releases and work limitations that fail to meet these standards do not support an expectation of competent services and the protection of plan participants and beneficiaries. Therefore, the independent fiduciary's decision to hire an expert that is unwilling to stand behind its work calls into question the prudence of the independent fiduciary's hiring decision, reduces the reliability of the appraisal report, and negates the purpose of requiring an independent appraisal of the subject assets.

New Exemption Request

8. On May 28, 2021, the Plan filed another exemption request, citing material developments that had occurred since the Department's Denial of the Prior Exemption Request. To address the issues raised in the Department's Denial Letter, Newport Trust Company (Newport), in its role as the qualified independent fiduciary (the Independent Fiduciary), engaged a new qualified independent appraiser, SB Advisors LLC (SB Advisors or the Independent Appraiser). The Applicant represents that Newport's engagement of SB Advisors is not subject to any provision that limits SB Advisor's liability for any acts of negligence, as more fully described below. The Applicant further notes that the Non-Union Plan no longer requires an exemption because it has been terminated and liquidated. Therefore, the exemption is now sought only by the Plan.

Loan to Master Trust

9. The Applicant states that, after the termination of the Non-Union Plan, the Foundation loaned $12 million to the Master Trust (the Loan). The Loan permitted the Master Trust to pay certain expenses, including expenses for the payment of ordinary operating expenses of the Plan, such as the purchase of annuity contracts for the benefit of Plan Participants, the lump sum payment of benefits to participants, and expenses incidental to the same.

10. The Applicant represents that the Loan is intended to comply with the applicable provisions of ERISA, including PTE 80–26, and the Code.[21] Among other things, the Foundation made the Loan without interest and without the Master Trust providing any security for the Loan. The Committee and the Foundation intend the Master Trust to repay the Loan as soon as reasonably possible after either the Foundation submits a written request for repayment or the exemption is granted and the Plan sells the Interests to the Foundation.

Proposed Sale of the Interests and ERISA Analysis

11. The requested exemption would permit the Plan to sell the Interests to the Foundation. ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale of any property between a plan and a party in interest. The Foundation is a party in interest with respect to the Plan under ERISA Section 3(14)(G) because it is an entity that has a 50% or greater ownership interest in CHOP, the Plan's Sponsor. ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. The Committee is a party in interest with respect to the Plan under ERISA Section 3(14)(A) because it is a fiduciary to the Plan.

12. ERISA Section 406(b)(1) prohibits a plan fiduciary from dealing with the assets of the plan in his or her own interest or for his or her own account. ERISA Section 406(b)(2) prohibits a plan fiduciary, in his or her individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

13. The Sale by the Plan of the Interests to the Foundation would violate ERISA Section 406(b)(1) and 406(b)(2). The Committee shares common individuals with the Foundation's Investment Office, and the Foundation's Investment Office is responsible for approving the Foundation's purchase of the Interests from the Plan. Moreover, the CHOP Board and the Foundation Board are comprised of the same individuals. The CHOP Board may have residual authority over the Committee's decision, as a fiduciary, to sell the Interests on behalf of the Plan. Similarly, the Foundation's Board may have residual authority over the Foundation's decision to purchase the Interests from the Plan.

[20] At the time of the Prior Exemption Request, the Plan and the Non-Union Plan were related entities. In this regard, the two Plans shared the same plan sponsor (CHOP) and were administered by the Committee.

[21] PTE 80–26, as amended at 71 FR 17917, April 7, 2006, allows a party in interest to make an interest-free loan to a plan if the proceeds of the loan are used for the payment of the plan's ordinary operating expenses, including the payment of benefits, or for a purpose incidental to the ordinary operation of the plan. In addition, the loan must be unsecured and not made by an employee benefit plan. The Department expresses no opinion herein on whether the Loan satisfies the requirements of PTE 80–26.

The Qualified Independent Fiduciary

14. The Committee retained Newport of New York, NY to serve as the Plans' Independent Fiduciary. The Committee represents that it selected and engaged Newport based solely on Newport's qualifications to serve as Independent Fiduciary after a prudent process, and that the Committee made the selection without regard to whether Newport's views were likely to favor the interests of CHOP, the Foundation, or any parties related to CHOP or the Foundation. The Committee represents that it selected Newport following a robust Request for Proposal (RFP) process, because of Newport's qualifications, including its significant history of serving as independent fiduciary in past transactions and positive references.

15. Newport represents that it possesses the appropriate technical training and proficiency with Title I of ERISA to serve as the Plan's Independent Fiduciary, and that it has the specific experience necessary to evaluate the Sale of the Interests on behalf of the Plan. Newport represents that it understands, acknowledges, and accepts its duties and responsibilities under ERISA in acting as Independent Fiduciary on behalf of the Plan, and that it is required to act solely in the interest of the Plan's participants and beneficiaries while exercising care, skill, and prudence in discharging its duties.

16. Newport represents that it is independent of, does not control, is not controlled by, and is unrelated to any parties in interest to the Sale, and that it will not directly or indirectly receive any compensation or other consideration in connection with the Sale, except for compensation for performing Independent Fiduciary services on behalf of the Plan. Newport also represents that the sum of its annual compensation received pursuant to its engagement as Independent Fiduciary, and from parties in interest with respect to the Plan and affiliates of CHOP and/or the Foundation, would not exceed two percent (2%) of Newport's annual gross revenues. Newport further represents that the receipt of its fee is not contingent upon, nor in any way affected by, Newport's ultimate decisions on behalf of the Plan in connection with the Sale.

17. Newport represents: (a) That no party related to CHOP or the Foundation has, or will, indemnify Newport in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to Newport in performing its duties as Independent Fiduciary on behalf of the Plan; (b) that it has not performed any prior work on behalf of CHOP or the Foundation, or on behalf of any party related to CHOP or the Foundation; (c) that it has no financial interest with respect to its work as Independent Fiduciary, apart from the express fees paid to Newport to represent the Plan with respect to the Sale; (d) that it has not received any compensation or entered into any financial or compensation arrangements with CHOP or the Foundation, or any parties related to CHOP or the Foundation; and (e) that it will not enter into any agreement or instrument regarding the Sale that violates ERISA Section 410 or the Department's regulations at 29 CFR Section 2509.75–4.[22]

18. As Independent Fiduciary, Newport is responsible for: (a) Representing the Plan's interests for all purposes with respect to the Sale; (b) determining that the Sale is in the interests of, and protective of, the Plan and the participants of the Plan; (c) reviewing and approving the terms and conditions of the Sale; (d) independently and prudently selecting and engaging the Independent Appraiser (described below) to value the Interests for the purposes of the Sale; (e) reviewing the Independent Appraisal Report, confirming that the underlying methodology is reasonable and accurate, and confirming that the Independent Appraiser has reasonably determined the fair market valuation of the Interests in accordance with professional standards; (f) ensuring that the independent appraiser renders an updated fair market valuation of the Interests as of the date of the Sale that includes a separate assessment regarding the likelihood that any Interest reported as having no value will receive trailing distributions, and the extent to which that likelihood affects the Interest's value; and (g) determining whether it is prudent for the Plan to proceed with the Sale. Additionally, not later than 90 days after the Sale is completed, the Independent Fiduciary must submit a written statement to the Department demonstrating that the Sale has met all the requirements of this exemption, which are described below.

The Qualified Independent Appraiser

19. On January 15, 2021, Newport engaged SB Advisors to appraise the Interests for purposes of the Sale. Newport represents that it: (a) Prudently selected SB Advisors to appraise the Interests on behalf of the Plan; (b) ensured SB Advisor's independence from CHOP, the Foundation, and any other related parties; and (c) confirmed that all information given to SB Advisors was complete, current, and accurate.

20. SB Advisors represents that it is independent of, and unrelated to, any party in interest to the Plan and that its revenues for 2021 from parties in interest and affiliates in connection with its engagement as Independent Appraiser would be less than two percent (2%) of its projected revenues for 2021. SB Advisors represents that it is qualified to serve as Independent Appraiser for purposes of the Sale, because of its comprehensive valuation experience specifically related to the valuation of alternative and illiquid investments for which there are no ''active market'' quotations. SB Advisors states that its principals have performed in-depth valuation analyses of various alternative and illiquid asset types, including limited partnership interests in private funds, intangible assets, direct loans, private debt securities, and preferred stock and common stock. Finally, SB Advisors represents that its principals have been retained to value limited partnership interests in funds for ERISA plans over the course of the past five years.

21. In connection with its engagement as Independent Appraiser, SB Advisors represents that: (a) No party related to this exemption request has, or will, indemnify SB Advisors in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to SB Advisors in performing its duties as Independent Appraiser on behalf of the Plan; (b) no contract or instrument that SB Advisors enters into with respect to the transactions that are the subject of the exemption purports to waive any liability under state or federal law for any such violation by SB Advisors; (c) neither SB Advisors, nor any parties related to SB Advisors, have performed any prior work on behalf of CHOP or the Foundation, or on behalf of any party related to CHOP or the Foundation; (d) neither SB Advisors, nor any parties related to SB Advisors, have any financial interest with respect to SB Advisors' work as Independent Appraiser, apart from the express fees paid to SB Advisors to value the Interests; and (e) neither SB Advisors, nor any parties related to SB Advisors, have received any compensation or entered into any financial or compensation arrangements with CHOP

[22] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA Section 410(a)] shall be void as against public policy.''

or the Foundation, or any parties related to CHOP or the Foundation.

The Independent Appraisal Report

22. In the Independent Appraisal Report, dated May 14, 2021, SB Advisors concludes that the Interests have a fair market value of $5,793,018, and a book value of $7,907,091. SB Advisors represents that it performed its appraisal of the Interests by gathering information about the Interests, reviewing each general partnership's valuation policy, determining the book value by subtracting distributions from the net asset value (NAV) and applying a price to NAV multiple to each of the Interests based on indicative secondary market pricing and comparable publicly traded funds. SB Advisors represents that it reviewed: (a) LPA and/or LLC agreements; (b) the private placement memorandum; (c) unaudited quarterly reports and financial statements; (d) general partner reports regarding capital accounts and holdings; (e) distribution notices; and (f) other internal documents relating to formation, history, current operations, and probable future outlook.

23. SB Advisors represents that it utilized two appraisal approaches: (a) Secondary market pricing indications; and (b) selected public funds price to NAV analysis. SB Advisors represents that it considered and eliminated other approaches deemed to be either unreliable or irrelevant based on the available information, including the income approach, market approach, and cost approach.

24. In addition to completing the Independent Appraisal Report described above, SB Advisors will issue a final Independent Appraisal Report to coincide with the date of the Sale.

The Independent Fiduciary Report

25. In the Independent Fiduciary Report, dated May 26, 2021, Newport concludes that the Sale is in the interest and protective of the Plan because it provides for immediate liquidity, favorable pricing, and the elimination of future cash liabilities. To reach its conclusions, Newport represents that it conducted a thorough and prudent process that involved numerous discussions and correspondence with personnel from the Committee, the Independent Appraiser, and its advisors.

26. In the Independent Fiduciary Report, Newport concludes that SB Advisors' valuation methodology is consistent with sound valuation principles. Newport also concludes that, in accordance with fiduciary standards, it was reasonable to rely upon SB Advisor's Appraisal under the circumstances.

27. Newport states that SB Advisors applied its valuation methodology in a consistent and objective manner and exercised professional judgment to account for the specific characteristics of each of the Interests. In Newport's view, SB Advisor's employed reasonable underlying assumptions and market observations based on relevant third-party research.

28. To ensure that SB Advisors properly applied its appraisal methodology, Newport represents that it: (a) Reviewed the qualitative description of the methodology against calculations reflected in various tables included in the Appraisal Report; (b) confirmed that the concluded price to NAV multiple of each Interest was consistent with price to NAV figures stated in other areas of the Appraisal Report; (c) recalculated the concluded price to NAV multiple for the Interests based on the price to NAV results from both of the valuation techniques outlined in the Appraisal Report; (d) assessed the reasonableness of the underlying assumptions; (e) reviewed public fund pricing reports and calculations utilized by the Independent Appraiser; (f) confirmed that the discount to NAV for each of the Interests was appropriately determined; and (g) reviewed secondary market pricing reports.

29. Newport states that the Sale is favorable to the Plan because it provides immediate liquidity, favorable pricing, and eliminates future cash liabilities. Newport states that an all-cash transaction is in the interest of the Plan and its participants because it provides liquidity for the Plan to immediately reinvest in other assets that are aligned with the Plan's investment policy statement. Newport further states that the Plan will sell the Interests to the Foundation for their fair market value. The Plan will not be responsible for any commissions, fees, or other expenses associated with the Sale and will not bear any costs associated with the exemption request, including the professional fees of outside counsel, the Independent Fiduciary, and the Independent Appraiser, which amount to at least $315,000. Newport notes that transaction commission and other fees can be significant, ranging between $125,000 and $165,000, and would otherwise have reduced the net proceeds received by the Plan in any sale to an unrelated third party.

30. Newport states the Sale, in and of itself, does not constitute an agreement, arrangement, or understanding designed to benefit the Foundation, and that its analysis does not suggest that the Interests have significant upside that would be forfeited by the Plan because of the Sale.

31. Based on its analysis, Newport states that it has determined that the terms and conditions of the Sale are fair to the Plan and are no less favorable than terms the Plan would receive through arm's-length negotiations with an unrelated third party. Newport states that the terms and conditions of the Sale are in the interest of, and protective of, the participants and beneficiaries of the Plan. Therefore, Newport has determined that it is prudent to proceed with the Sale. Finally, within 90 days after the Sale is completed, Newport will submit a written report to the Department demonstrating that each exemption condition has been met.

Other Conditions of the Proposed Exemption

32. The Plan will receive cash for each Interest based on the fair market value of the Interests as of the date of the Sale based upon an appraisal report prepared by the Independent Appraiser. The terms and conditions of the Sale will be no less favorable to the Plan than the terms the Plan would have received under similar circumstances in an arm's-length transaction with an unrelated third party. Further, the Foundation will assume any remaining capital commitments in connection with the Interests, and the Plan will pay no commissions, fees, or other expenses in connection with the Sale. The Foundation will obtain written consent from each Fund manager to purchase the Interests from the Plan prior to engaging in the Sale of the Interests.

Statutory Findings

33. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria are discussed below.

34. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the Sale is administratively feasible because, among other things, an Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Sale and ensure that the Interests are sold for their full fair market value as of the date of the sale.

35. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined

that the proposed exemption is in the interest of the Plan. Among other things, the Sale would enable the Plan to sell an illiquid asset at its full fair market value for cash, which will provide added liquidity for the Plan.

36. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plans' participants and beneficiaries. Among other things, Newport, as Independent Fiduciary, must prudently represent the Plan's interests for all purposes with respect to the Sale, and must ensure that the protective conditions that are mandated under this exemption are met. In addition, not later than 90 days after the Sale is completed, Newport must submit a written statement to the Department demonstrating that the Sale has met all of the exemption conditions.

Summary

34. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that it can find that the relief sought by the Applicant would satisfy the statutory requirements for the Department to grant an administrative exemption under ERISA Section 408(a).

Proposed Exemption

Section I. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A) and (D), and 406(b)(1) and (b)(2), and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (D) and (E), shall not apply to the Sale of the Interests by the Plan to the Foundation, provided the conditions set forth in Section II are met.

Section II. Conditions

(a) The Sale of each Interest is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated third party;

(c) The Sale price for each Interest will be the fair market value of the Interest as of the date of the Sale, as determined by the Independent Fiduciary, based upon an updated Independent Appraisal Report prepared by the Independent Appraiser that values the Interest as of the date of the Sale;

(d) The Foundation assumes any remaining capital commitments in connection with the Interests;

(e) The Plan pays no commissions, fees, or other expenses in connection with the Sale;

(f) The Independent Fiduciary:

(1) Represents the Plan's interests for all purposes with respect to the Sale;

(2) Determines that the Sale is in the interests of, and protective of, the Plan and the participants of the Plan;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Independently and prudently engages the Independent Appraiser for the Sale;

(5) Reviews the Independent Appraisal Report, confirms that the underlying methodology is reasonable and accurate, and confirms that the Independent Appraiser has reasonably determined the fair market valuation of the Interests in accordance with professional standards;

(6) Ensures that the Independent Appraiser renders an updated fair market valuation of the Interests as of the date of the Sale. The updated market valuation must include a separate assessment as to the likelihood that any Interest reported as having no value may nonetheless receive trailing distributions. The Independent Appraiser must consider this likelihood when valuing any Interest, and address the extent to which this likelihood affects the Interest's value;

(7) Determines whether it is prudent for the Plan to proceed with the Sale;

(8) Has not and will not enter into any agreement or instrument that violates ERISA Section 410;

(9) Confirms that each condition of the exemption has been met; and

(10) Submits a written report to the Department not later than 90 days after the Sale has been completed demonstrating that each exemption condition has been met. The written report must include the Independent Fiduciary's determinations regarding whether any Interest is likely to receive trailing distributions, and the extent to which to any anticipated trailing distributions increased the Interest's value.

(g) The Plan does not bear the costs of: (1) The exemption application; (2) obtaining the exemption; (3) the Independent Fiduciary; or (4) the Independent Appraiser;

(h) The Foundation receives written consent from each Fund manager to purchase the Interests from the Plan prior to engaging in the Sale of the respective Interests;

(i) The Sale is not part of an agreement, arrangement, or understanding designed to benefit CHOP or the Foundation; and

(j) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: If granted, the exemption will in effect as of the date the grant notice is published in the **Federal Register**.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include participants in the Plans who are actively employed by CHOP or another employer participating in the Plans, participants in the Plans who are no longer actively employed by CHOP or other employers that have participated in a Plan, and Plan beneficiaries in pay status. The Applicant will provide notification to interested persons by electronic mail and first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

Further Information Contact: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404

of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of March 2022.

George Christopher Cosby,

Acting Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–04954 Filed 3–8–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

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, ''National Dislocated Workers Emergency Grant Application and Reporting Procedures.'' 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 May 9, 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 Ingrid Schonfield by telephone at 202–693–0269 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *schonfield.ingrid.n@dol.gov.*

Instructions: 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 Workforce Investment, 200 Constitution Avenue NW, Washington, DC 20210; by email: *schonfield.ingrid.n@dol.gov;* or by fax 202–693–3817. To ensure proper consideration, include the Office of Management and Budget (OMB) control number 1205–0439.

Comments Under the PRA: In addition to filing comments with the Department, interested parties may submit comments concerning this ICR to OMB's Office of Information and Regulatory Affairs (OIRA) at *https://www.reginfo.gov/public/do/PRAMain.* Find the relevant information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Contact Ingrid Schonfield by telephone at 202–693–0269 (this is not a toll-free number) or by email at *schonfield.ingrid.n@dol.gov.*

SUPPLEMENTARY INFORMATION: National Dislocated Worker Grants (NDWGs) are discretionary grants awarded by the Secretary of Labor under Section 170 of the Workforce Innovation and Opportunity Act (WIOA). NDWGs provide states and other eligible applicants resources to respond to large, unexpected layoff events causing significant job losses. NDWG funds temporarily expand state, regional, and local workforce system capacity to serve dislocated workers, meet the increased demand for WIOA employment and training services, quickly reemploy laid-off workers, and enhance their employability and earnings. The NDWG legacy application and modification forms (ETA–9103, ETA–9105, ETA–9106, and ETA–9107) include project planning, employer, project summary, and project operator information. These legacy forms and application processes constitute the information collection request. ETA expects these forms to sunset shortly as all NDWG applications shift to the *grants.gov* application process associated with a different information collection.

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 OMB for final approval. This public comment process 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.

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. To help ensure appropriate consideration, comments should mention OMB control number 1205–0439.

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: National Dislocated Workers Emergency Grant Application and Reporting Procedures.

Form: ETA 9103–1, ETA 9103–2a, ETA 9103–2b, ETA 9103–3, ETA 9105, ETA 9106, ETA 9107.

OMB Control Number: 1205–0439.

Affected Public: State, local, and tribal governments.

Estimated Number of Respondents: 159.

Frequency: Once.

Total Estimated Annual Responses: 951.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 768 hours.

Total Estimated Annual Other Cost Burden: $0.

Angela Hanks,

Acting Assistant Secretary, Labor.

[FR Doc. 2022–04956 Filed 3–8–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Request for Employment Information (CA–1027)

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''Request for Employment Information (CA–1027). 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 May 9, 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 Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@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, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The 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 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.

Background: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA). Payment of compensation for partial disability to injured Federal workers is required by 5 U.S.C. 8106. That section also requires the Office of Workers' Compensation Programs (OWCP) to obtain information regarding a claimant's earnings during a period of eligibility to compensation. The CA–1027, Request for Employment Information, is the form used to obtain information for an individual who is employed by a private employer. This information is used to determine the claimant's entitlement to compensation benefits. This information collection is currently approved for use through August 31, 2022.

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 under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall 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(b) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and 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 Number 1240–0047. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The 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-Office of Workers' Compensation Programs.

Type of Review: Extension.

Title of Collection: Request for Employment Information.

Form: CA–1027.

OMB Number: 1240–0047.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 10.

Frequency: On occasion.

Total Estimated Annual Responses: 10.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3.

Total Estimated Annual Other Cost Burden: 0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2022–04961 Filed 3–8–22; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–018)]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than March 24, 2022 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than March 24, 2022 will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

OBJECTIONS AND FURTHER INFORMATION: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at Email: *hq-patentoffice@mail.nasa.gov.* Questions may be directed to Phone: (202) 358–3437.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described and claimed in: U.S. Patent No. 8,384,614 titled ''Deployable Wireless Fresnel Lens'' to ORC Tech, LLC having its principal place of business in Ohkay Owingeh, NM. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2022–04916 Filed 3–8–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (22–019)]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than March 24, 2022, that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than March 24, 2022, will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at Email: *hq-patentoffice@mail.nasa.gov.* Questions may be directed to Phone: (202) 358–3437.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described and claimed in U.S. Patent Application Serial No. 17/523,522 entitled ''Electrosprayer Space Watering System,'' filed on November 10, 2021, to Electrostatic Spraying Systems, Inc., having its principal place of business in Watkinsville, Georgia. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *https://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2022–04983 Filed 3–8–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Subject 30-Day Notice for the ''Program and Event Feedback Surveys for the Creative Forces®: NEA Military Healing Arts Network Community Arts Engagement Subgranting Program''; Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data is provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents is properly assessed. Currently, the National Endowment for the Arts is soliciting comments concerning the proposed information collection through two surveys for individuals who participate in community arts programs (Program Feedback Survey) and events (Event Feedback Survey) funded by the Creative Forces®: NEA Military Healing Arts Network Community Arts Engagement Subgranting Program. Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.Reginfo.gov.*

DATES: Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''National Endowment for the Arts'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title: Program and Event Feedback Surveys for the Creative Forces®: NEA Military Healing Arts Network Community Arts Engagement Subgranting Program.

OMB Number: New.

Frequency: Annual program feedback surveys; one-time event feedback surveys.

Affected Public: Participants/attendees of Creative Forces Community Engagement Programs/Events.

Estimated Number of Respondents: 945 annually (420 program participants + 525 event attendees per year).

Total Burden Hours: 78.7 annually (35 for program participants + 43.5 for event attendees per year).

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $40,000.00.

Description: The planned data collection is a new information collection request, and the data to be collected are not available elsewhere unless obtained through this information collection. This collection will include two feedback surveys to be administered by grantees of the Creative Forces Community Engagement Grant Program: The Program Feedback Survey and the Event Feedback Survey. This is a new grant program of the Arts Endowment. Data collection activities will occur annually through the grant program, with the first cycle of grants awarded in 2022. Knowledge gained through this information collection will enable the Arts Endowment to collect feedback on Creative Forces programs and events.

The Creative Forces®: NEA Military Healing Arts Network seeks to improve the health, well-being, and quality of life for military and veteran populations exposed to trauma, and for their families and caregivers through clinical and non-clinical programs (*https://www.arts.gov/initiatives/creative-forces*). Creative Forces is funded through Congressional appropriation. The Congressional Committee on Appropriation ''supports the NEA's continued efforts to expand upon this successful program to embed Creative Arts Therapies at the core of integrative care efforts in clinical settings, advance collaboration among clinical and community arts providers to support wellness and reintegration efforts for affected families, and advance research to improve our understanding of impacts of these interventions in both clinical and community settings.''

According to the National Endowment for the Arts 2018–2022 Strategic Plan, evidence building for Strategic Objective 2.4, Support Access to Creative Arts Therapies and Evidence-Based Programs in the Arts and Health, involves ''the development of a community engagement research agenda and framework for defining indicators and developing metrics for measuring the impact and benefits from participation in therapeutic arts interventions and community-based arts engagement programs aligned with, or complementary to, Creative Forces clinical program outcomes.''

Beginning in 2022, Creative Forces will award Community Engagement Grants to support non-clinical arts engagement programming for military-connected populations through matching grants of $10,000 to $50,000 for emerging (''Emerging'') and established (''Advanced'') community-based arts engagement projects to serve military-connected populations. The Arts Endowment anticipates awarding approximately 35 awards annually, with the first round of grant-funded projects taking place after July 1, 2022. The grant program will support a range of program models (*e.g.,* ongoing class, drop-in studio, single event) designed to meet local needs. The grant program will be the largest coordinated effort in the U.S. to provide community arts engagement programming for military and veteran populations exposed to trauma, and for their families and caregivers. The Creative Forces Community Engagement Grant Program is conducted in partnership with Mid-America Arts Alliance (M–AAA).

The Program and Event Feedback Surveys gather data from program participants and from attendees of public events about their satisfaction and level of engagement with the activities. The Event Feedback Survey also gathers information about participants' understanding of the value of arts and understanding of military experience and culture. The data is collected by grantees, who administer the surveys, and uploaded to a central,

national database. Grantees will receive site-level data to use in ongoing program improvement and grant reporting. Grantees of the Community Engagement Grant Program are required to participate in technical assistance to ensure they are able to administer the surveys, collect the data, and use the data to guide decisions about their programs. The Arts Endowment will use the data to monitor program outputs as part of grant program performance measurement.

Dated: March 4, 2022.

Meghan Jugder,

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

[FR Doc. 2022–04985 Filed 3–8–22; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for Partnership for Research and Education in Materials (PREM)

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 9, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Partnerships for Research and Education in Materials (PREM).

OMB Number: 3145–0232.

Expiration Date of Approval: September 30, 2022.

Type of Request: Intent to seek approval to renew an information collection.

Overview of this Information Collection: The Partnerships for Research and Education in Materials (PREM) aims to enhance diversity in materials research and education by stimulating the development of formal, long-term, collaborative research and education relationships between minority-serving colleges and universities and centers, institutes and facilities supported by the NSF Division of Materials Research (DMR). With this collaborative model PREMs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. PREMs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society, with an emphasis on enhancing diversity.

PREMs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. PREMs capitalize on diversity through participation and collaboration in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

PREMs will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of the award PREMs will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in *Research.gov.* These indicators are both quantitative and descriptive and may include, for example, the characteristics of personnel and students; sources of financial support and in-kind support; expenditures by operational component; research activities; education activities; patents, licenses; publications; degrees granted to students involved in PREM activities; descriptions of significant advances and other outcomes of the PREM effort.

Each PREM's annual report will include the following categories of activities: (1) Research, (2) education (3) outreach, (4) partnerships, (5) diversity, (6) management, and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the PREM has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

PREMs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports but are retrospective.

Use of the Information: NSF will use the information to continue funding of PREMs, and to evaluate the progress of the program.

Estimate of Burden: 50 hours per PREM for 32 PREMs for a total of 1,600 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the fifteen PREMs.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: March 4, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–05008 Filed 3–8–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–607; NRC–2022–0035]

Regents of the University of California, University of California—Davis McClellan Nuclear Research Center Training, Research, Isotope, General Atomics Nuclear Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; docketing; opportunity to request a hearing and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff accepts and dockets an application for the renewal of Facility Operating License R–130, submitted by Regents of the University of California (the licensee) dated June 11, 2018, as supplemented on July 6, 2020. The renewed license would authorize the licensee to operate University of California—Davis McClellan Nuclear Research Center (MNRC) Training, Research, Isotope, General Atomics (TRIGA) nuclear reactor at a maximun steady-state thermal power of 1.0 megawatts (MW) for an additional 20 years from the date of issuance. The University of California Davis—MNRC TRIGA nuclear reactor is located on the former McClellan Airforce Base, approximately 8 miles northeast of Sacramento, California. Because this application contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: A request for a hearing or petitions for leave to intervene must be filed by May 9, 2022. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by March 21, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0035 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0035. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Geoffrey Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0893, email: *Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 11, 2018, the Regents of the University of California filed with the NRC pursuant to Section 103 of the Atomic Energy Act and 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' an application for the renewal of the University of California-Davis MNRC TRIGA nuclear reactor located in Davis, California. By letter dated July 6, 2020, the licensee updated its license renewal application to reflect its decision to reduce the licensed thermal operating power level from 2.3 MW to 1.0 MW, and to eliminate pulsing capability and irradiation of explosive materials in the reactor tank. As supplemented by various letters referenced in Section II, ''Availability of Documents,'' of this document, the NRC staff received an application from the licensee filed pursuant to 10 CFR 50.51(a) to renew Facility Operating License No. R–130 for the University of California Davis—MNRC TRIGA nuclear reactor.

The application contains SUNSI.

Based on its initial review of the application, the NRC staff determined that the Regents of the University of California submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 so that the application is acceptable for docketing. The current Docket No. 50–607 for Facility Operating License No. R–130 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

II. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
University of California, Davis—Renewal of Facility Operating License No. R–130, Regents of the University of California, dated June 11, 2018.	ML18179A500 (Package).
University of California Davis McClellan Nuclear Research Center (MNRC) Requested Changes to Facility License Renewal Application, dated May 10, 2019.	ML19132A147.
MNRC License (R–130) Renewal Application Package Docket Number 50–607, dated July 6, 2020	ML20188A367 (Package).
University of California-Davis—Letter for Response to Request for Supplemental Information, dated September 22, 2021.	ML21265A540 (Package).
UC Davis MNRC Response to NRC Staff Request for Additional Information Regarding Licensing Renewal Application Letter Issued November 30th, 2021, dated December 17, 2021.	ML21351A317.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056), and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html*.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to: (1) Request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. (ET) on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., (ET), Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2.

The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: March 3, 2022.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Acting Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt + 30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt + 25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt + 7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2022–04931 Filed 3–8–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 87 FR 12748, March 7, 2022.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, March 9, 2022 at 12:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, March 9, 2022 at 12:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b)

Dated: March 7, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–05097 Filed 3–7–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94356; File No. SR–FINRA–2022–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

March 3, 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 February 25, 2022, 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 and II, below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] 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 extend, to October 26, 2022, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA–2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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 October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates, as defined more fully in the filing (collectively, ''Covered Agency Transactions''). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[4]

Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would become effective on December 15, 2016, six months from the Approval Date.[5]

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR–FINRA–2015–036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend margining agreements and related documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance[6] and, pursuant to SR–FINRA–2017–029,[7] extended the implementation date of the requirements of SR–FINRA–2015–036 to June 25, 2018, except for the risk limit determination requirements, which, as announced in *Regulatory Notice* 16–31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and mid-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration. In response to these concerns, FINRA further extended the implementation date of the requirements of SR–FINRA–2015–036, other than the risk limit determination requirements, most recently to April 26, 2022 (the ''April 26, 2022 implementation date'),[8] and, informed by extensive dialogue, both with industry participants and other regulators, including the staff of the SEC and the Federal Reserve System, FINRA proposed amendments to the requirements of SR–FINRA–2015–036 (the ''Proposed Amendments'').[9]

The SEC, pursuant to delegated authority, approved the Proposed Amendments on January 20, 2022;[10] however, the Commission has stated that, in accordance with Rule 431(e) of the Commission's Rules of Practice, the action approving the Proposed Amendments is stayed until the Commission orders otherwise.[11] FINRA believes it is appropriate, in the interest of regulatory clarity, to adjust the implementation of the requirements pursuant to SR–FINRA–2015–036 pending further action by the Commission on the Proposed Amendments. As such, FINRA is proposing to extend the April 26, 2022 implementation date to October 26, 2022. FINRA notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December 15, 2016, and, as such, the implementation of such requirements is not affected by the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change serves the interest of regulatory clarity in the Covered Agency Transaction market pending further Commission action on the Proposed Amendments. FINRA believes that this will thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

[4] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

[5] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: <*www.finra.org*>.

[6] Available at: <*www.finra.org/rules-guidance/guidance/faqs*>. Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: <*www.finra.org/rules-guidance/guidance/faqs*>.

[7] *See* Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2017–029); *see also Regulatory Notice* 17–28 (September 2017).

[8] *See* Securities Exchange Act Release No. 93630 (November 19, 2021), 86 FR 67557 (November 26, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–028).

[9] *See* Securities Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (Notice of Filing of a Proposed Rule Change to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–010). *See also* Partial Amendment No. 1 to SR–FINRA–2021–010, and Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated September 16, 2021, both available at: <*www.finra.org*>.

[10] *See* Securities Exchange Act Release No. 94013 (January 20, 2022), 87 FR 4076 (January 26, 2022) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036).

[11] *See* Letter from J. Matthew DeLesDernier, Assistant Secretary, SEC, to Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, dated January 27, 2022, available at: *sec.gov.*

[12] 15 U.S.C. 78*o*–3(b)(6).

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. FINRA believes that extending the April 26, 2022 implementation date to October 26, 2022, pending further Commission action on the Proposed Amendments, will help to provide clarity to industry participants and to promote stability in the Covered Agency Transaction market, thereby benefiting all parties.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the proposed rule change will help to provide clarity to industry participants and to promote stability in the Covered Agency Transaction market pending further Commission Action on the Proposed Amendments.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to extend the implementation date of the amendments to Rule 4210 pursuant to SR–FINRA–2015–036 (other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016) does not raise any new or novel issues and will reduce any potential uncertainty in the Covered Agency Transaction market. Therefore, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–003 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–2022–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–2022–003 and should be submitted on or before March 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–04920 Filed 3–8–22; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[17] For purposes of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94353; File No. SR–MIAX–2021–58]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Exchange Rule 532, Order and Quote Price Protection Mechanisms and Risk Controls

March 3, 2022.

I. Introduction

On November 16, 2021, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the

[1] 15 U.S.C. 78s(b)(1).

''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Exchange Rules 100 and 518 and to adopt new Exchange Rule 532, ''Order and Quote Price Protection Mechanisms and Risk Controls.'' The proposed rule change was published for comment in the **Federal Register** on December 3, 2021.[4] The Commission received no comment letters regarding the proposal. On January 13, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On February 22, 2022, the Exchange filed Amendment No. 1 to the proposal, which amends and replaces the original filing in its entirety.[7] On March 2, 2022, the Exchange filed Amendment No. 2 to the proposal.[8] The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Exchange Rule 532, Order and Quote Price Protection Mechanisms and Risk Controls. The Exchange proposes to adopt a new Managed Protection Override feature, a new Max Put Price Protection feature, and a new MIAX Strategy Price Protection (''MSPP'') in new proposed Rule 532.

The Exchange proposes to relocate and amend paragraph (a), Vertical Spread Variance (''VSV'') Price Protection; paragraph (b), Calendar Spread Variance (''CSV'') Price Protection; and paragraph (c) VSV and CSV Price Protection, from Interpretations and Policies .05 of Exchange Rule 518 to new proposed Rule 532 as described below. Additionally, the Exchange proposes to adopt a new Butterfly Spread Variance (''BSV'') Price Protection to proposed section (b)(2) of new proposed Rule 532.

The Exchange proposes to relocate paragraph (d), Implied Away Best Bid or Offer (''ixABBO'') Price Protection; and paragraph (f), Complex MIAX Options Price Collar Protection; from Interpretations and Policies .05 of Exchange Rule 518 to new proposed Rule 532 in their entirety and without modification as section (b)(6), Complex MIAX Options Price Collar Protection; and section (b)(7), Implied Away Best Bid or Offer (''ixABBO'') Price Protection. The Exchange also proposes to relocate paragraph (g), Market Maker Single Side Protection, from Interpretations and Policies .05 of Exchange Rule 518 to new proposed Rule 532 as section (b)(8), Market Maker Single Side Protection. The Exchange also proposes to make a minor non-substantive edit to the rule text of Market Maker Single Side Protection.

The Exchange proposes to adopt new Interpretations and Policies .01, to new proposed Rule 532 to state that, when an order is eligible for multiple price protections the System[9] will apply the most conservative.

The Exchange proposes to amend Exchange Rule 100, Definitions to insert a clarifying term to the definition of ''Book.''[10]

The Exchange proposes to relabel paragraph (e) of Interpretations and Policies .05 of Exchange Rule 518 to paragraph (a), and to make a number of non-substantive changes to update internal cross references throughout Exchange Rule 518 that have changed as a result of the proposed changes contained herein.

Background

The Exchange began trading complex orders[11] in October, 2016.[12] As part of its effort to continue to build out its complex order market segment the Exchange has continued to add order types[13] and functionality. To encourage Members[14] to send complex orders to

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 93676 (November 29, 2021), 86 FR 68695.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 93972 (January 13, 2022), 87 FR 3137 (January 20, 2022). The Commission designated March 3, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[7] Amendment No. 1 modifies the original filing to (1) indicate that, if enabled, the proposed Managed Protection Override will apply to all of the risk protections listed in proposed Exchange Rule 532; (2) revise the Max Put Price Protection for Simple Orders to indicate that an offer eQuote greater than the maximum trading price limit will be cancelled; (3) add clarifying detail to the proposed definition of Butterfly Spread and revise the proposed Butterfly Spread Variance Price Protection to describe the treatment of orders and eQuotes limit priced outside the minimum and maximum trading price limits in the proposed rule; (4) revise the Calendar Spread Variance Price Protection to describe the treatment of buy orders and bid eQuotes priced less than the minimum trading price limit in the proposed rule; (5) revise the Vertical Spread Price Protection to describe the treatment of orders and eQuotes priced outside the minimum and maximum trading price limits in the proposed rule; (6) revise the proposed MIAX Strategy Price Protection to indicate that complex orders with a time-in-force of Day or GTC are eligible for the protection; (7) add clarifying detail to the Market Maker Single Side Protection; (8) add Interpretation and Policy .01 to proposed Exchange Rule 532, which states that the System will apply the most conservative price protection to an order when an order is eligible for multiple price protections; (9) make non-substantive grammatical changes to the text of the proposed rules; (10) more clearly identify rules that the proposal will relocate to new proposed Exchange Rule 532 without substantive changes; and (11) describe the Exchange's rationale for the pre-set value the Exchange will use in the proposed MIAX Strategy Price Protection Variance. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-miax-2021-58/srmiax202158.htm*.

[8] Amendment No. 2 revises the proposal to describe the application of the proposed MIAX Strategy Price Protection applies to complex market orders. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-miax-2021-58/srmiax202158.htm*.

[9] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[10] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

[11] A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. *See* Exchange Rule 518(a)(5).

[12] For a complete description of the trading of complex orders on the Exchange, *see* Exchange Rule 518. *See also,* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26).

[13] *See* Securities Exchange Act Release Nos. 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR–MIAX–2020–16) (Proposal to adopt new Complex Attributable Order); 89212 (July 1, 2020), 85 FR 41075 (July 8, 2020) (SR–MIAX–2020–20) (Proposal to adopt new Complex Auction-on-Arrival-Only ''cAOAO'' order type).

[14] The term ''Member'' means an individual or organization approved to exercise the trading rights

the Exchange the Exchange has implemented numerous risk protections specifically tailored to complex orders. The Exchange is now proposing to modify Exchange Rule 518, Complex Orders, to relocate and consolidate certain risk protection functionality in new proposed Exchange Rule 532, Order and Quote Price Protection Mechanisms and Risk Controls, and to adopt additional risk protection functionality as described below.

Proposal

Managed Protection Override

The Exchange proposes to adopt a new Managed Protection Override feature which will work in conjunction with certain risk protections on the Exchange. If a Member enables the Managed Protection Override then all risk protections connected to the Managed Protection Override feature are engaged. When a risk protection connected to the Managed Protection Override feature is triggered, and the Managed Protection Override feature has been enabled, the order subject to the risk protection will be cancelled.

The Managed Protection Override will be available for the following risk protections: Vertical Spread Variance (''VSV'') Price Protection, Calendar Spread Variance (''CSV'') Price Protection, new proposed Butterfly Spread Variance (''BSV'') Price Protection, Parity Price Protection, and new proposed Max Put Price Protection.

Currently, when the Vertical Spread Variance (''VSV'') Price Protection and the Calendar Spread Variance (''CSV'') Price Protection are triggered the default behavior is to manage the order in accordance to Exchange Rule 518(c)(4).[15] Additionally, when the Parity Price Protection is triggered the default behavior is to place the order on the Strategy Book [16] at its parity protected price.[17] The Exchange believes that offering Members the option to have their orders either managed by the Exchange or cancelled gives Members greater flexibility and control over their orders while retaining risk protection functionality.

Max Put Price Protection (''MPPP'')

The Exchange proposes to adopt a new price protection for put options [18] by establishing a maximum price at which a put option may trade.[19] To determine the maximum price the Exchange will add a pre-set value, the Put Price Variance,[20] to the strike price of the put option. The pre-set value will be determined by the Exchange and communicated to Members via Regulatory Circular. Buy orders that are priced through the maximum trading price limit will trade up to, and including, the maximum trading price limit, and will then be placed on the Book and managed to the appropriate trading price limit as described in Rule 515(c)(1)(ii), or cancelled if the Managed Protection Override (''MPO'') is enabled. Sell orders that are priced higher than the maximum trading price limit will be rejected.

A bid quote through the maximum trading price limit will trade up to, and including, the maximum trading price limit, then will be placed on the Book and managed to the appropriate trading price limit as described in Rule 515(c)(1)(ii), or in the case of a bid eQuote,[21] will be cancelled.[22] An offer quote greater than the maximum trading price limit is not rejected and will be placed on the Book and displayed. An offer eQuote greater than the maximum trading price limit will be cancelled.

Example Max Put Price Protection for a Buy Market Order

An order to Buy 10 XYZ Jan 5 Put @ Market is received.

The current market is:

MBBO [23] 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10
Max Put Price Protection = (Strike + PPV) = $5.10

The Max Put Price Protection establishes the maximum trading price limit at which an order can trade. Because the Buy Order is priced through the Max Put Price Protection of $5.10, the order is subject to management pursuant to 515(c)(1)(ii) and is posted to the order book at $5.10.

MBBO 5.10 (10) × 5.50 (10)

Example Max Put Price Protection for a Sell Limit Order

An Order to Sell 10 XYZ Jan 5 Put @ $5.25 is received.

The current market is:

MBBO 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10
Put Option = XYZ Jan 5 Put
Max Put Price Protection = (Strike + PPV) = $5.10

Because the Sell Order is priced higher than the Max Put Price Protection of $5.10, the order is rejected.

Example Max Put Price Protection for a Buy Quote

A Quote to Buy 10 XYZ Jan 5 Put @ $5.50 is received.

The current market is:

MBBO 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10
Put Option = XYZ Jan 5 Put
Max Put Price Protection = (Strike + PPV) = $5.10

Because the Buy Quote is priced through the Max Put Price Protection of $5.10, the quote is posted to the order book and managed at $5.10.

MBBO 5.10 (10) × 5.50 (10)

Example Max Put Price Protection for a Sell Quote

A Quote to Sell 10 XYZ Jan 5 Put @ $5.25 is received.

The current market is:

associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[15] *See* Interpretations and Policies .05(c) of Exchange Rule 518.

[16] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[17] *See* Interpretations and Policies .01(g) of Exchange Rule 518.

[18] The term ''put'' means an option contract under which the holder of the option has the right, in accordance to the terms and provisions of the option, to sell to the Clearing Corporation the number of units of the underlying security covered by the option contract. *See* Exchange Rule 100.

[19] The Exchange notes that the Cboe Exchange offers a similar Buy Order Put Protection which provides that if a User enters a buy limit order for a put with, or if a buy market order (or unexecuted portion) for a put would execute at, a price higher than or equal to the strike price of the option, the System cancels or rejects the order (or unexecuted portion) or quote. This check does not apply to adjusted series or bulk messages. *See* Cboe Exchange Rule 5.34(a)(3).

[20] The proposed pre-set value for the Put Price Variance will be $0.10 to align to other similar price protections on the Exchange and will apply to all classes. The Exchange believes this value provides an adequate price range for executions while offering price protection against potentially erroneous executions. *See* MIAX Regulatory Circular 2016–47, MIAX Complex Order Price Protection Pre-set Values (October 20, 2016) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_RC_2016_47.pdf,* which establishes a $0.10 pre-set value for Vertical Spreads and Calendar Spreads.

[21] The Exchange offers two different types of quotes for use in its simple market: A Standard quote, which is submitted by a Market Maker that cancels and replaces the Market Maker's previous Standard quote, if any; and an eQuote which is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. *See* Exchange Rule 517(a)(1) and (2).

[22] Currently, eQuotes offered on the Exchange do not have a time in force setting that would allow them to be managed. *See* Exchange Rule 517(a)(2).

[23] The term ''MBBO'' means the best bid or offer on the Simple Order Book on the Exchange. *See* Exchange Rule 518(a)(13). The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

MBBO 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10

Put Option = XYZ Jan 5 Put

Max Put Price Protection = (Strike + PPV) = $5.10

Although the Sell Quote is priced higher than the Max Put Price Protection of $5.10, sell Quotes priced higher than the Max Put Price Protection are not rejected and therefore it is posted to the order book at $5.25.

MBBO 5.10 (10) × 5.25 (10)

The Exchange treats orders and quotes differently on the Exchange as orders may only be submitted by Electronic Exchange Members (''EEMs'') [24] and quotes may only be submitted by Market Makers [25] on the Exchange. Market Makers have heightened obligations on the Exchange including the requirement to provide continuous two sided quotes under Exchange Rule 604(e),[26] and as such the Exchange minimizes the times it will cancel Market Maker quotes.

The Exchange believes that offering Members the option to have orders either managed by the Exchange or cancelled when a risk protection is triggered gives Members greater flexibility and control over their orders while retaining the risk protection functionality. If the Managed Protection Override is enabled the Exchange will return the unexecuted order to the Member for further analysis and evaluation. If the Managed Protection Override is not enabled the Exchange will manage the unexecuted order on behalf of the Member.

[24] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[25] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[26] A Primary Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes, which for the purpose of paragraph (e) of Rule 604 which shall mean 90% of the time, for the options classes to which it is appointed. *See* Exchange Rule 604(e)(1)(i); A Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes, which for the purpose of paragraph (e) of Rule 604 which shall mean 90% of the time, for the option classes to which it is appointed. *See* Exchange Rule 604(e)(2)(i); A Registered Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes throughout the trading day in 60% of the non-adjusted series that have a time to expiration of less than nine months in each of its appointed classes. For the purpose of paragraph (e) of Rule 604 which, continuous two-sided quoting shall mean 90% of the time, for the options classes to which the Registered Market Maker is appointed. *See* Exchange Rule 604(e)(3)(i).

Definitions

The Exchange proposes to include a ''Definitions'' section as paragraph (b)(1) in Rule 532. For the purposes of proposed paragraph (b) the Exchange will adopt the following definition of a Butterfly Spread in section (b)(1)(i): A ''Butterfly Spread'' is a three legged Complex Order with two legs to buy (sell) the same number of calls [27] (puts) and one leg to sell (buy) twice the number of calls (puts), all legs have the same expiration date but different exercise prices, and the exercise price of the middle leg is between the exercise prices of the other legs. The strike price of each leg is equidistant from the next sequential strike price.[28]

The Exchange also proposes to relocate the definition of Calendar Spread and Vertical Spread from Interpretations and Policies .05(b) and .05(a) of Exchange Rule 518 respectively, to proposed section (b)(1)(ii) and (iii) of proposed Rule 532 respectively. The definition of a Calendar Spread is a complex strategy consisting of one call (put) option and the sale of another call (put) option overlaying the same security that have different expirations but the same strike price. The definition of a Vertical Spread is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices. The Exchange notes its definition of a Calendar Spread and a Vertical Spread is not changing under this proposal.

Butterfly Spread Price Variance (''BSV'') Price Protection

The Exchange proposes to adopt a new price protection for Butterfly Spreads as section (b)(2) of new proposed Rule 532. A butterfly spread is comprised of three legs which have the same expiration date, and are of the same type, either calls or puts, and are at equal strike intervals. The upper and lower strikes are each a buy (sell) and the middle strike is a sell (buy). The ratio of a butterfly spread will always be +1 −2 +1 or −1 +2 −1.

Butterfly Spread Example

Buy 1 XYZ April 50 Call

[27] The term ''call'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of units of the underlying security covered by the option contract. *See* Exchange Rule 100.

[28] The Exchange notes that its proposed definition of a Butterfly Spread is substantially similar to the definition of a Butterfly Spread used by at least one other options exchange. *See* Cboe Exchange Rule 5.34(b)(1)(B).

Sell 2 XYZ April 55 Calls

Buy 1 FYX April 60 Call

The Exchange will determine a Butterfly Spread Variance which establishes minimum and maximum trading price limits for Butterfly Spreads. The minimum value of a Butterfly Spread is zero and the maximum value is capped at the absolute value of the difference between the closest strikes (the upper strike price minus the middle strike price or the middle strike price minus the lower strike price). To establish the maximum and minimum trading price limits, a configurable pre-set value is added to the maximum value of the Butterfly Spread and subtracted from the minimum value of the Butterfly Spread. The pre-set value will be determined by the Exchange and communicated to Members via Regulatory Circular.[29] The minimum and maximum trading price limits are used together to create an allowable trading range for the Butterfly Spread.

If the execution price of a complex order would be outside of the minimum and maximum trading price limits (bid higher than the maximum trading price limit or offer lower than the minimum trading price limit), such complex order will trade up to, and including the maximum trading price limit for bids or down to, and including, the minimum trading price limit for offers. Remaining interest will then be placed on the Strategy Book and managed to the appropriate trading price limit as described in Rule 518(c)(4), or cancelled if the Managed Protection Override is enabled.

By establishing minimum and maximum trading price limits the Exchange can then evaluate the reasonableness of the prices of orders and eQuotes against these limits. The Exchange will reject an order, or cancel an eQuote, if the price is determined to be unreasonable relative to the minimum or maximum trading price limit. Buy orders with a limit price less than the minimum trading price limit will be rejected. Bid eQuotes with a limit price less than the minimum trading price limit will be cancelled. Sell orders with a limit price greater than the maximum trading price limit will be rejected. Offer eQuotes with a limit price greater than the maximum trading price limit will be cancelled.

[29] The Exchange proposes to use a pre-set value of $0.10 for Butterfly Spreads which will apply to all classes to align to the pre-set value which is used on the Exchange for Calendar Spreads and Vertical Spreads. *See supra* note 24.

Example

Butterfly Spread: Buy 1 April 50 Call, Sell 2 April 55 Calls, Buy 1 April 60 Call.

April 50 Call MBBO: $11.00 × $16.00
April 55 Call MBBO: $6.00 × $11.00
April 60 Call MBBO: $1.00 × $6.00

The maximum spread value is the absolute value of the difference between the closest strikes or $5.00 (60.00 − 55.00 or 55.00 − 50.00). The minimum spread value is zero. If the pre-set value is $0.10 the maximum allowable price limit is then $5.10 and the minimum allowable price limit is then −$0.10. A strategy order to buy at $5.15 will be managed on the Strategy Book at $5.10.

Calendar Spread Variance (''CSV'') Price Protection

The Exchange proposes to (i) relocate the Calendar Spread Variance (''CSV'') Price Protection from Rule 518; (ii) restructure the rule text for internal consistency with other similar price protections in the Exchange's rules (BSV and VSV); (iii) make clarifying changes to the rule text; and (iv) amend the rule text to enable the operation of the Managed Protection Override.

Currently, paragraph (b) of Interpretation and Policy .05 of Rule 518, Calendar Spread Variance (''CSV'') Price Protection, provides that, a ''Calendar Spread'' is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price. The CSV establishes a minimum trading price limit for Calendar Spreads. Current subparagraph (1) provides that, the maximum possible value of a Calendar Spread is unlimited, thus there is no maximum price protection for Calendar Spreads. The minimum possible trading price limit of a Calendar Spread is zero minus a pre-set value. Current subparagraph (2) provides that, the pre-set value will be uniform for all option classes traded on the Exchange as determined by the Exchange and communicated to Members via Regulatory Circular. Current subparagraph (3) provides that, CSV Price Protection applies only to strategies in American-style option classes. Current paragraph (c) of Interpretation and Policy .05 of Rule 518 provides that, if the execution price of a complex order would be outside of the limits set forth in subparagraphs (a)(1) and (b)(1) of this Interpretations and Policies .05, such complex order will be placed on the Strategy Book and will be managed to the appropriate trading price limit as described in subparagraph (c)(4) of Rule 518. Orders to buy below the minimum trading price limit and orders to sell above the maximum trading price limit (in the case of Vertical Spreads) will be rejected by the System.

The Exchange now proposes to relocate Calendar Spread Variance (''CSV'') Price Protection from Interpretations and Policies .05(b) of Rule 518 to paragraph (b)(3) of new proposed Rule 532 and to restructure the rule text for internal consistency with other similar price protections in the Exchange's rules. Specifically, the Exchange proposes to relocate current paragraph (1) of the rule to new proposed subparagraph (i)[30] of the rule, without change. The Exchange proposes to adopt new subparagraph (ii) to new proposed Rule 532(b)(3) to clarify the operation of the price protection. New subparagraph (ii) will state that, if the execution price of a complex order would be outside of the limit set forth in subparagraph (i) of this rule (offers lower than the minimum trading price limit), such complex order will trade down to, and including, the minimum trading price limit. Remaining interest will then be placed on the Strategy Book and managed to the appropriate trading price limit as described in Rule 518(c)(4), or cancelled if the Managed Protection Override is enabled. Further, the Exchange proposes to adopt new subparagraph (iii) which will provide that, buy orders with a limit price less than the minimum trading price limit will be rejected. Bid eQuotes with a limit price less than the minimum trading price limit will be cancelled.

The Exchange proposes to relocate current paragraph (3) of Interpretations and Policies .05(b) of Rule 518 to new subparagraph (iv) and current paragraph (2) of Interpretations and Policies .05(b) of Rule 518 to new subparagraph (v) of proposed Rule 532(b)(3), in their entirety and without modification.

Vertical Spread Variance (''VSV'') Price Protection

The Exchange proposes to (i) relocate Vertical Spread Variance (''VSV'') Price Protection from Rule 518; (ii) restructure the rule text for internal consistency with other similar price protections in the Exchange's rules (BSV and CSV); (iii) make clarifying changes to the rule text; and (iv) amend the rule text to enable the operation of the Managed Protection Override.

Currently, paragraph (a) of Interpretation and Policy .05 of Rule 518, Vertical Spread Variance (''VSV'') Price Protection, provides that, a ''Vertical Spread'' is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices. The VSV establishes minimum and maximum trading price limits for Vertical Spreads. Current subparagraph (1) provides, the maximum possible trading price limit of the VSV is the difference between the two component strike prices plus a pre-set value. For example, a Vertical Spread consisting of the purchase of one January 30 call and the sale of one January 35 call would have a maximum trading price limit of $5.00 plus a pre-set value. The minimum possible trading price limit of a Vertical Spread is always zero minus a pre-set value. Current subparagraph (2) provides that, the pre-set value will be uniform for all option classes traded on the Exchange as determined by the Exchange and communicated to Members via Regulatory Circular.

The Exchange now proposes to relocate paragraph (a), Vertical Spread Variance (''VSV'') Price Protection, from Interpretations and Policies .05(a) of Rule 518 to paragraph (b)(4) of new proposed Rule 532. The Exchange proposes to bifurcate the current rule text of paragraph (a) by adding the definition of a Vertical Spread to the Definitions section of proposed Rule 532, and retaining the rule text that states, the VSV establishes minimum and maximum trading price limits for Vertical Spreads.

The Exchange proposes to adopt new subparagraph (i)[31] to new proposed Rule 532(b)(4) which will state that, the maximum possible trading price limit of the VSV is the difference between the two component strike prices plus a pre-set value. For example, a Vertical Spread consisting of the purchase of one January 30 call and the sale of one January 35 call would have a maximum trading price limit of $5.00 plus a pre-set value. The minimum possible trading price limit of a Vertical Spread is always zero minus a pre-set value.

The Exchange proposes to adopt new subparagraph (ii) to state that, if the execution price of a complex order would be outside of the limits set forth in subparagraph (i) of this rule (bid higher than the maximum trading price limit or offer lower than the minimum trading price limit), such complex order

[30] The Exchange notes that proposed subparagraph (i) is identical to current paragraph (1) of Interpretations and Policies .05(b) of Exchange Rule 518.

[31] The Exchange notes that proposed subparagraph (i) is identical to current paragraph (1) of Interpretations and Policies .05(a) of Exchange Rule 518.

will trade up to, and including, the maximum trading price limit for bids or down to, and including, the minimum trading price limit for offers. Remaining interest will then be placed on the Strategy Book and managed to the appropriate trading price limit as described in Rule 518(c)(4), or cancelled if the Managed Protection Override is enabled. Further, the Exchange proposes to adopt new subparagraph (iii) which will provide that, buy orders with a limit price less than the minimum trading price limit will be rejected. Bid eQuotes with a limit price less than the minimum trading price limit will be cancelled. Sell orders with a limit price greater than the maximum trading price limit will be rejected. Offer eQuotes with a limit price greater than the maximum trading price limit will be cancelled.

The Exchange proposes to relocate current subparagraph (2) of Interpretations and Policies .03(a) of Rule 518 to new subparagraph (iv) of proposed Rule 532(b)(4), in its entirety and without modification.

MIAX Strategy Price Protection (''MSPP'')

The Exchange now proposes to introduce a MIAX Strategy Price Protection (''MSPP'') which will establish a maximum protected price for buy orders and a minimum protected price for sell orders. To determine the maximum price for a buy order the Exchange will add a pre-set value, the MIAX Strategy Price Protection Variance (''MSPPV''), to the offer side value of the cNBBO [32] (or the offer side of the dcMBBO [33] if the cNBBO is crossed).[34] To determine the minimum protected price for sell orders the Exchange will subtract the MSPPV value from the bid side value of the cNBBO, (or the bid side of the dcMBBO if the cNBBO is crossed). The MSPPV value will be determined by the Exchange and communicated to Members via Regulatory Circular.[35] For market orders [36] the functional limit will be the MSPP. Complex orders with a time in force of Day [37] or GTC [38] are eligible for the MIAX Strategy Price Protection. The MIAX Strategy Price Protection is an additional price protection feature provided to all Members of the Exchange.

If the MSPP is priced less aggressively than the limit price of a complex order (*i.e.,* the MSPP is less than the complex order's bid price for a buy order, or the MSPP is greater than the complex order's offer price for a sell order), or if the order is a complex market order, the order will be (i) executed up to, and including, its MSPP for buy orders; or (ii) executed down to, and including, its MSPP for sell orders. Any unexecuted portion of such a complex order will be cancelled.

If the MSPP is priced equal to, or more aggressively than, the limit price of a complex order (*i.e.,* the MSPP is greater than the complex order's bid price for a buy order, of the MSPP is less than the complex order's offer price for a sell order) the order will be (i) displayed and/or executed up to, and including, its limit price for buy orders; or (ii) displayed and/or executed down to, and including, its limit price for sell orders. Any unexecuted portion of such a complex order: (A) Will be subject to the cLEP as described in subsection (e) of Exchange Rule 518; (B) may be submitted, if eligible, to the managed interest process described in Exchange Rule 518(c)(4); or (C) may be placed on the Strategy Book at its limit price.

The MSPP is designed to work in conjunction with other features on the Exchange such as the Complex Liquidity Exposure (''cLEP'') Process. The Exchange introduced the Complex Liquidity Exposure Process (cLEP) in 2018.[39] The cLEP process was designed for complex orders and complex eQuotes that violate their Complex MIAX Price Collar (''MPC) price.[40] The MPC price protection feature is an Exchange-wide mechanism under which a complex order or complex eQuote to sell will not be displayed or executed at a price that is lower than the opposite side cNBBO bid at the time the MPC is assigned by the System (*i.e.,* upon receipt or upon opening) by more than a specific dollar amount expressed in $0.01 increments (the ''MPC Setting''), and under which a complex order or eQuote to buy will not be displayed or executed at a price that is higher than the opposite side cNBBO offer at the time the MPC is assigned by the System by more than the MPC Setting (each the ''MPC Price'').[41] The MPC Price is established (i) upon receipt of the complex order or eQuote during free trading, or (ii) if the complex order or eQuote is not received during free trading, at the opening (or reopening following a halt) of trading in the complex strategy; or (iii) upon evaluation of the Strategy Book by the System when a wide market condition, as described in Interpretations and Policies .05(e)(1) of this Rule, no longer exists.[42] Once established the MPC Price will not change during the life of the complex order or eQuote. If the MPC Price is priced less aggressively than the limit price of the complex order or eQuote (*i.e.,* the MPC Price is less than the complex order or eQuote's bid price for a buy, or the MPC Price is greater than the complex order or eQuote's offer price for a sell), or if the complex order is a market order, the complex order or eQuote will be displayed and/or executed up to its MPC Price.[43]

A complex order or complex eQuote that would violate its MPC Price begins a cLEP Auction.[44] The System will post the complex order or eQuote to the Strategy Book at its MPC Price and begin the cLEP Auction by broadcasting a liquidity exposure message to all subscribers of the Exchange's data feeds.[45] Remaining liquidity with an original limit price that is (i) less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the MPC Price will be handled in accordance with subsection (c)(2)(ii)–(v) of Rule 518, or (ii) more aggressive than the MPC Price

[32] The cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. For stock-option orders, the cNBBO for a complex strategy will be calculated using the NBBO in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(2).

[33] The dcMBBO is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcMBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(8).

[34] A complex strategy is not evaluated until all the components of the complex strategy are open on the Simple Order Book. Therefore, a dcMBBO will always be available as the System prevents the Simple Order Book from displaying a locked or crossed market. *See* Exchange Rule 518(c)(2)(i).

[35] The Exchange proposes to use a pre-set value of $2.50 for the MIAX Strategy Price Protection Variance (''MSPPV''). The Exchange believes this value provides an adequate price range for executions while offering price protection against potentially erroneous executions and aligns to other price protections on the Exchange. *See* Exchange Rule 518 Interpretations and Policies .06.

[36] A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. *See* Exchange Rule 516(a).

[37] A Day Limit Order is an order to buy or sell which, if not executed, expires at the end of trading in the security on the day on which it was entered. *See* Exchange Rule 516(k).

[38] A Good 'til Cancelled or ''GTC'' Order is an order to buy or sell which remains in effect until it is either executed, cancelled or the underlying option expires. *See* Exchange Rule 516(l).

[39] *See* Securities Exchange Act Release No. 85155 (February 15, 2019), 84 FR 5739 (February 22, 2019) (SR–MIAX–2018–36).

[40] The Exchange notes that there are no changes to the Complex MIAX Price Collar functionality under this proposal.

[41] *See* Exchange Rule 518.05(f).

[42] *See* Exchange Rule 518.05(f)(3).

[43] *See* Exchange Rule 518.05(f)(5).

[44] *See* Exchange Rule 518(e).

[45] *Id.*

will be subject to the Reevaluation Process.[46]

The Reevaluation process occurs at the conclusion of a cLEP Auction where the System will calculate the next potential MPC Price for remaining liquidity with an original limit price more aggressive than the existing MPC Price. The next MPC Price will be calculated as the MPC Price plus (minus) the next MPC increment for buy (sell) orders (the ''New MPC Price''). Liquidity with an original limit price equal to or less aggressive than the New MPC Price is no longer subject to the MPC price protection. Liquidity with an original limit price more aggressive than the New MPC Price (or market order liquidity) is subject to the MPC price protection feature using the New MPC Price. In certain scenarios this could lead to a cycle of cLEP Auctions and ever increasing MPC price protection prices.

The operation of the MIAX Strategy Price Protection feature during a cLEP Auction can be seen in the following example.

Example

MPC: 0.25

The Exchange has one order (Order 1) resting on its Strategy Book: +1 component A, −1 component B:

The current market is:

MBBO component A: 4.00(10) × 6.00(10)
MBBO component B: 1.00(10) × 2.50(10)
NBBO[47] component A: 4.05(10) × 4.15(10)
NBBO component B: 2.30(10) × 2.40(10)
cMBBO:[48] 1.50 (10) × 5.00 (10)
cNBBO: 1.65 (10) × 1.85 (10)

The price protection is:

MSPPV: 2.50
Buy MSPPV: 1.85 + 2.50 = 4.35
Sell MSPPV: 1.65 − 2.50 = −.85

Order 1 to sell 10 at 1.90 is received and updates the cMBBO.

cMBBO: 1.50 (10) × 1.90 (10)

The Exchange receives a new order (Order 2) to buy 30 at the Market. For Market Orders the functional limit is the MSPP or 4.35.

Order 2 buys 10 from Order 1 at $1.90 and initiates the Complex Liquidity Exposure Process: Order 2 reprices to its MPC protected price of $2.10 (cNBO of 1.85 + 0.25) and is posted at that price on the Strategy Book and the cLEP Auction begins.

During the cLEP Auction the Exchange receives a new order (Order 3) to sell 10 at 2.10. This order locks the current same side Book Price of $2.10. At the end of the auction, Order 3 sells 10 to Order 2 at $2.10, filling Order 3.

Order 2 reprices to the next MPC protected price of $2.35 (initial MPC of 2.10 + 0.25) and is posted at that price on the Strategy Book and the next cLEP Auction begins.

During the next cLEP Auction the Exchange does not receive any interest to sell. At the end of the auction Order 2 is reevaluated and reprices to the next MPC protected price of 2.60 (previous MPC of 2.35 + 0.25) and is posted at that price on the Strategy Book and the next cLEP Auction begins.

During all subsequent cLEP Auctions the Exchange does not receive any interest to sell. At the end of each subsequent auction, Order 2 is reevaluated and repriced to the next MPC protected price as seen below until the MSPP protected price is equal to or less than the MPC protected price.

3rd MPC evaluation 2.60 + 0.25 = 2.85
4th MPC evaluation 2.85 + 0.25 = 3.10
5th MPC evaluation 3.10 + 0.25 = 3.35
6th MPC evaluation 3.35 + 0.25 = 3.60
7th MPC evaluation 3.60 + 0.25 = 3.85
8th MPC evaluation 3.85 + 0.25 = 4.10
9th MPC evaluation 4.10 + 0.25 = 4.35

At the end of the final auction, because the MSPP protected price of 4.35 is equal to the MPC protected price of 4.35, Order 2 is not repriced to the next MPC and is cancelled subject to MSPP as Order 2 was a market order.[49]

cMBBO: 4.35 (10) × 5.00 (10)

The Exchange proposes to amend Exchange Rule 518(e), Reevaluation, to account for the introduction of a protected price in the cLEP process. The proposed rule text will provide that, at the conclusion of a cLEP Auction, the System will calculate the next potential MPC Price for remaining liquidity with an original limit price or protected price more aggressive than the existing MPC Price. The next MPC Price will be calculated as the MPC Price plus (minus) the next MPC increment for buy (sell) orders (the ''New MPC Price''). The System will initiate a cLEP Auction for liquidity that would execute or post at a price that would violate its New MPC Price. Liquidity with an original limit price or protected price less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the New MPC Price will be posted to the Strategy Book at its original limit price or handled in accordance with subsection (c)(2)(ii)—(v) of this Rule. The cLEP process will continue until no liquidity remains with an original limit price that is more aggressive than its MPC Price. At the conclusion of the cLEP process, any liquidity that has not been executed will be posted to the Strategy Book at its original limit price.

The Exchange also proposes to amend Rule 518(e), Allocation at the Conclusion of a Complex Liquidity Exposure Auction. Currently the rule states that, orders and quotes executed in a cLEP Auction will be allocated first in price priority based upon their original limit price, and thereafter in accordance with the Complex Auction allocation procedures described in subsection (d)(7)(i)–(vi) of this Rule. The Exchange now proposes to amend this provision to state that orders subject to MSPP are allocated using their protected price. As proposed the amended rule will state that, orders and quotes executed in a cLEP Auction will be allocated first in price priority based upon their original limit price, orders subject to MSPP are allocated using their protected price, and thereafter in accordance with the Complex Auction allocation procedures described in subsection (d)(7)(i)–(vi) of this Rule.

Parity Price Protection

The Exchange proposes to amend paragraph (g), Parity Price Protection, Interpretations and Policies .01 of Exchange Rule 518, to incorporate the Managed Protection Override feature. Currently the rule text states, Married-Put and Buy-Write interest to sell (sell put and sell stock; or sell call and buy stock) that is priced below the parity protected price for the strategy will be placed on the Strategy Book at the parity protected price for the strategy. The Exchange proposes to amend this sentence to provide that, Married-Put and Buy-Write interest to sell (sell put and sell stock; or sell call and buy stock) that is priced below the parity protected price for the strategy will be placed on the Strategy Book at the parity protected price for the strategy, or cancelled if the Managed Protection Override is enabled. This provision allows the Parity Price Protection functionality to operate in conjunction with the Managed Protection Override feature which cancels an order when its price protection feature is triggered. The Exchange believes that offering Members the option to have orders either managed by the Exchange or cancelled when a risk protection is triggered gives Members greater flexibility and control over their orders

[46] *Id.*

[47] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[48] The cMBBO is calculated using the MBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy on the Exchange.

[49] *See* proposed Rule 532(b)(5)(v).

while retaining the risk protection functionality.

The Exchange proposes to adopt Interpretations and Policies .01 to proposed Rule 532, to state that, when an order is eligible for multiple price protections the System will apply the most conservative. The Exchange offers a number of price protections in the System, for example, if a limit order to buy a non-proprietary product had indicated a price protection [50] for the order at 5 MPVs [51] from the NBBO at the time of receipt and the NBBO for the XYZ Jan 5 put was 4.80 × 5.10 the price protection would not let the order trade at more than 5.35, however, in this instance the proposed Max Put Price Protection would be applied and the order would not trade higher than 5.10, which is the more conservative of the price protections. The Exchange believes that this change promotes the protection of investors as it protects investors from executions at undesirable prices.

Miscellaneous

The Exchange proposes to rename paragraph (e), Wide Market Conditions, SMAT Events and Halts, of Interpretations and Policies .05 of Exchange Rule 518, to new paragraph (a), as a result of the removal of the preceding paragraphs (a), (b), (c), and (d) from Interpretations and Policies .05 of Exchange Rule 518, which have been relocated to new proposed Rule 532. Additionally, the Exchange proposes to make a number of non-substantive changes in Rule 518 to correct internal cross references that have changed as a result of this proposal.

The Exchange also proposes to amend the definition of ''Book'' in Exchange Rule 100 by adding the clarifying term ''simple'' to the current definition. The Exchange proposes to define the term ''Book'' to mean the electronic book of simple buy and sell orders and quotes maintained by the System. When the Exchange introduced complex orders the Exchange defined the ''Strategy Book'' [52] as the Exchange's electronic book of complex orders and complex quotes. Additionally, the Exchange defined the ''Simple Order Book'' [53] as the Exchange's regular electronic book of orders and quotes in Rule 518. The Exchange believes its proposal to amend the definition provided in Exchange Rule 100 adds clarity to the definition regarding which book of orders and quotes is being referenced.

The Exchange proposes to make a minor non-substantive edit to the rule text of Market Maker Single Side Protection (proposed Rule 532(b)(8)). Currently, the rule text provides that, when triggered, the System will cancel all complex Standard quotes and block all new inbound complex Standard quotes and cIOC eQuotes for that particular side of that strategy for that MPID. The System will provide a notification message to the Market Maker.[54] The Exchange now proposes to expand on the previously mentioned sentence to read, the System will provide a notification message to the Market Maker that the protection has been triggered. The Exchange believes that this amendment provides additional detail and clarity regarding the operation of the rule.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [55] in general, and furthers the objectives of Section 6(b)(5) of the Act [56] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Managed Protection Override

The Exchange believes that the Managed Protection Override feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing a mechanism by which Members may determine the way their orders are handled when a risk protection is triggered. The Exchange believes that it has an effective way to manage orders on the Exchange so that they do not execute at potentially erroneous prices, however the Exchange believes that giving Members the option to have their orders cancelled if a risk protection is triggered protects investors and the public interest. When the Exchange cancels an order, a Member can make a decision on what to do with that order based on the then current market conditions and may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

Max Put Price Protection

The Exchange believes that the Max Put Price Protection feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing a risk protection mechanism to prevent trades from occurring at potentially unwanted or erroneous prices. Additionally, the Exchange believes that making this risk protection feature eligible for the Managed Protection Override feature benefits Members as it gives them the option to have their order cancelled if the Max Put Price Protection is triggered and the Managed Protection Override feature is enabled. Cancelling orders back to Members allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

Butterfly Spread Variance (''BSV'') Price Protection

The Exchange believes that the Butterfly Spread Variance (''BSV'') Price Protection feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing a risk protection mechanism that will

[50] *See* Exchange Rule 515(c)(1).

[51] *See* Exchange Rule 510.

[52] *See* Exchange Rule 518(a)(17).

[53] *See* Exchange Rule 518(a)(15).

[54] *See* Interpretations and Policies .05(g) of Exchange Rule 518.

[55] 15 U.S.C. 78f(b).

[56] 15 U.S.C. 78f(b)(5).

establish minimum and maximum trading limits to prevent an order from trading at a potentially unwanted or erroneous price.

Additionally, the Exchange believes that making the Butterfly Spread Variance (''BSV'') Price Protection eligible for the Managed Protection Override feature benefits Members as it gives them the option to have their order cancelled if the Butterfly Spread Variance Price Protection is triggered and the Managed Protection Override feature is enabled. Cancelling orders back to Members allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

Calendar Spread Variance (''CSV'') Price Protection

The Exchange believes that amending the Calendar Spread Variance (''CSV'') Price Protection feature to enable the Managed Protection Override feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing Members the option of having the Exchange manage their order when a price protection is triggered, or having their order cancelled when a price protection is triggered, if the Managed Protection Override is enabled. The Exchange believes cancelling an order in this scenario benefits Members as it allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

The Exchange believes amending the rule text to clarify the operation of the rule and to harmonize the rule text to that of the Vertical Spread Variance (''VSV'') and Butterfly Spread Variance (''BSV'') Price Protections promotes the protection of investors by having similar rule text and similar behavior for similar price protections which provides clarity and consistency within the Exchange's rulebook. A clear and concise rulebook benefits investors and the public interest as it reduces the chance for confusion regarding the operation of price protection functionality.

Vertical Spread Variance (''VSV'') Price Protection

The Exchange believes that amending the Vertical Spread Variance (''VSV'') Price Protection feature to enable the Managed Protection Override feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing Members the option of having the Exchange manage their order when a price protection is triggered, or having their order cancelled, when a price protection is triggered, if the Managed Protection Override is enabled. The Exchange believes cancelling an order in this scenario benefits Members as it allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

The Exchange believes amending the rule text to clarify the operation of the rule and to harmonize the rule text to that of the Calendar Spread Variance (''CSV'') and Butterfly Spread Variance (''BSV'') Price Protections promotes the protection of investors by having similar rule text and similar behavior for similar price protections which provides clarity and consistency within the Exchange's rulebook. A clear and concise rulebook benefits investors and the public interest as it reduces the chance for confusion regarding the operation of price protection functionality.

MIAX Strategy Price Protection (''MSPP'')

The Exchange believes that the adoption of the MIAX Strategy Price Protection (''MSPP'') promotes just and equitable principles of trade, and facilitates transactions in securities, remove impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest, by providing an order price protection that establishes a minimum and maximum trading value to prevent potentially unwanted or erroneous executions from occurring. The Exchange believes that when the MSPP is priced less aggressively than the limit price of the complex order, or complex market order [sic], that executing the order, up to an [sic] including its MSPP for buy orders, or down to and including its MSPP for sell orders, and cancelling any unexecuted portion of the order, protects investors and the public interest. Cancelling orders back to Members allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

Parity Price Protection

The Exchange believes that amending Interpretations and Policies .01(g), Parity Price Protection, of Exchange Rule 518, to operate in conjunction with the Managed Protection Override feature promotes just and equitable principles of trade, and facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest, by providing Members greater flexibility and control over their orders if the Parity Price Protection is triggered. The Exchange believes that making this risk protection feature eligible for the Managed Protection Override feature benefits Members as it gives them the option to have their order cancelled if the Parity Price Protection is triggered and the Managed Protection Override

feature is enabled. Cancelling orders back to Members allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

Miscellaneous

The Exchange believes that amending the definition of ''Book'' promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing a clarifying term to the existing definition. In particular, the Exchange believes that the proposed change will provide greater clarity to Members and the public regarding the Exchange's Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

The Exchange believes that relocating the Implied Away Best bid or Offer (''ixABBO'') Price Protection and the Complex MIAX Options Price Collar Protection from Interpretations and Policies .05 of Exchange Rule 518 to new proposed Rule 532 in their entirety and without modification promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by organizing and consolidating risk protections into a single Rule. The Exchange believes that organizing and consolidating the Exchange's risk protection features as described herein provides ease of reference for investors and the public when reviewing the Exchange's rulebook and it is in the best interest of investors and the public for the Exchange's rulebook to be clear and accurate so as to avoid confusion.

The Exchange believes that the non-substantive update to the Market Maker Single Side Protection rule text provides additional detail and clarity regarding the operation of the rule by specifying that the notification message to Market Makers will indicate that the price protection has been triggered. The Exchange believes it benefits investors and the public interest for rules to be accurate and concise as it reduces the chance for confusion regarding the operation of Exchange functionality.

The Exchange believes the proposed change to correct internal cross references within the Exchange's Rulebook promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposal ensures that the Exchange's rules are accurate. The Exchange notes that the proposed changes to correct internal cross references and to make minor non-substantive edits does not alter the application of each rule. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and national exchange system. In particular, the Exchange believes that the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

The Exchange believes this proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing new price protection features for MIAX Members. Additionally, the description of the System's functionality is designed to promote just and equitable principles of trade by providing a clear and accurate description to all participants of how the price protection process is applied and should assist investors in making decisions concerning their orders. Further, the Exchange believes that the price protection features and functionality provides market participants with an appropriate level of risk protection to their orders and contributes to the maintenance of a fair and orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange does not believe that the proposed changes will impose any burden on intra-market competition as the rules of the Exchange apply equally to all MIAX participants. The price protections are available for any MIAX Member that submits orders or quotes to the Exchange. Any MIAX Member that submits a complex order to the Exchange will benefit from the risk protections proposed herein. Further any MIAX Member that seeks to buy or sell a put will be afforded the MAX Put Price Protection. Additionally, any Member may elect to enable the Managed Protection Override feature to allow the Exchange to cancel their orders when a risk protection is triggered.

In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal is intended to protect investors by providing additional price protection functionality and further enhancements and transparency to the Exchange's risk protections. The Exchange's proposal may promote inter-market competition as the Exchange's proposal adds additional price protection features and functionality that may attract additional order flow to the Exchange, thereby promoting inter-market competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment Nos. 1 and 2, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[57] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act,[58] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

[57] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[58] 15 U.S.C. 78(b)(5).

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule changes are designed to provide useful risk management tools to Members on the Exchange. The proposal adopts a new Max Put Price Protection for simple orders and a new MIAX Strategy Price Protection and Butterfly Spread Variance Price Protection for complex orders. The Exchange states that each of these proposed price protections could help to prevent trades from occurring at potentially unwanted or erroneous prices.[59] The proposed Max Put Price Protection for simple orders will establish a maximum trading price limit for put options, which the Exchange will determine by adding a pre-set value, the Put Price Variance, to the strike price of the option.[60] The Exchange notes that another options exchange offers a similar protection for put options.[61] The proposed MIAX Strategy Price Protection (''MSPP''), which will be available for complex orders with a time-in-force of Day or GTC, establishes a maximum protected price for buy orders and a minimum protected price for sell orders.[62] The proposed Max Put Price Protection, MIAX Strategy Price Protection, and Butterfly Spread Variance Price Protection are designed to protect investors by helping to mitigate potential risks associated with executing trades at what the Exchange believes are potentially erroneous prices.

The proposal also adopts a new Managed Protection Override feature.[63] If a Member enables the Managed Protection Override for its orders, an order that triggers the Vertical Spread Variance Price Protection, the Calendar Spread Variance Price Protection, the proposed Butterfly Spread Variance Price Protection, the Parity Price Protection, or the proposed Max Put Price Protection will be cancelled back to the Member rather than managed by the Exchange.[64] Returning the unexecuted order to the Member will allow the Member to evaluate the order and determine how to handle the order based on current market conditions. The proposed Managed Protection Override feature could benefit market participants by providing them with greater flexibility and control over orders that trigger a risk protection that is subject to the Managed Protection Override.

The proposal relocates to proposed Exchange Rule 532, in their entirety and without modification, the Implied Away Best Bid or Offer (''ixABBO'') Price Protection in current Exchange Rule 518, Interpretation and Policy .05(d) and the Complex MIAX Options Price Collar Protection in current Exchange Rule 518, Interpretation and Policy .05(f). The proposal also relocates to proposed Exchange Rule 532 the Market Maker Single Side Protection in current Exchange Rule 518, Interpretation and Policy .05(g), the Vertical Spread Variance Price Protection in current Exchange Rule 518, Interpretation and Policy .05(a), and the Calendar Spread Variance Price Protection in current Exchange Rule 518, Interpretation and Policy .05(b).[65] Consolidating these risk protection features, as well as the proposed Managed Protection Override, Max Put Price Protection, MIAX Strategy Price Protection, and Butterfly Spread Variance Price Protection, in a single rule could help market participants to more readily identify the price protections that could apply to their orders. The proposal also renumbers certain rules and updates internal cross-references within the Exchange's rules, which could help to maintain the accuracy of the Exchange's rules.

The Calendar Spread Variance Price Protection and the Vertical Spread Variance Price Protection provisions in proposed Exchange Rule 532(b)(3) and (4), respectively, retain provisions of the existing Calendar Spread Variance Price Protection and Vertical Spread Variance Price Protection in current Exchange Rules 518, Interpretation and Policy .05(b) and (a), respectively, incorporate and add detail to the Vertical Spread Variance and Calendar Spread Variance Price Protection in current Exchange Rule 518, Interpretation and Policy .05(c),[66] and provide additional detail to more fully describe the operation of the price protections. The additional detail could provide greater transparency regarding the way that an order will trade after it triggers the Vertical Spread Variance or Calendar Spread Variance Price Protection. In addition, the proposed rules will provide greater transparency regarding the treatment of orders and eQuotes entered at prices outside of the trading price limits established in those rules.[67]

The proposal adopts new Exchange Rule 532, Interpretation and Policy .01, which states that the System will apply the most conservative price protection when an order is eligible for multiple price protections. Specifying the price protection that the System will apply when an order is eligible for multiple price protections could provide market participants with greater transparency regarding the handling of their orders and help to protect against potentially erroneous executions.

The proposal amends the Market Maker Single Side Protection, which will be relocated to proposed new Exchange Rule 532(b)(8), to specify that the notification message sent to a market maker will indicate that the Market Maker Single Side Protection has been triggered. This addition should provide clarifying detail to the rule. The proposal also revises the definition of Book in Exchange Rule 100 to indicate that the term refers to the electronic book of simple buy and sell orders and quotes maintained by the System. The addition of the reference to simple orders and quotes should help to clarify the Exchange's rules by more specifically identifying the order book the term references.

[59] *See* Amendment No. 1 at 32, 33, and 36.

[60] *See* proposed Exchange Rule 532(a)(1). The Exchange states that the proposed pre-set value for the Put Price Variance will be $0.10 to align with other similar price protections on the Exchange and will apply to all classes. The Exchange believes this value provides an adequate price range for executions while offering price protection against potentially erroneous executions. *See* Amendment No. 1 at 11, n. 24. The Exchange will communicate the Put Price Variance to Members via Regulatory Circular. *See* proposed Exchange Rule 532(a)(1)(iv).

[61] *See* Amendment No. 1 at 11, n. 33 (citing Cboe Rule 5.34(a)(3)).

[62] *See* proposed Exchange Rule 532(b)(5) and Amendment No. 1 at 43.

[63] *See* proposed Exchange Rule 532.

[64] *See* proposed Exchange Rule 532. In addition to incorporating the proposed Managed Protection Override into the proposed new Max Put Price Protection and the proposed new Butterfly Spread Variance Price Protection, the proposal revises the existing Parity Price Protection in Exchange Rule 518, Interpretation and Policy .01(g), the Calendar Spread Variance Price Protection in proposed Exchange Rule 532(b)(3), and the Vertical Spread Variance Price Protection in proposed Exchange Rule 532(b)(4) to reflect the operation of the proposed Managed Protection Override.

[65] Proposed Exchange Rule 532(b)(1) defines the terms Butterfly Spread, Calendar Spread, and Vertical Spread. The proposed definitions of Vertical Spread and Calendar Spread are substantially the same as the definitions of those terms in current Exchange Rule 518, Interpretation and Policy .05(a) and (b). The proposed definition of Butterfly Spread is substantially similar to the definition of Butterfly Spread used in the rules of another options exchange. *See* Cboe Rule 5.33(b)(1)(B).

[66] Current Exchange Rule 518, Interpretation and Policy .05(c) states that if the execution price of a complex order would be outside of the limits set forth in Exchange Rule 518, Interpretation and Policy .05(a)(1) and (b)(1) for Vertical Spreads and Calendar Spreads, respectively, the complex order will be placed on the Strategy Book and will be managed to the appropriate trading price limit as described in Exchange Rule 518(c)(4). Orders to buy below the minimum trading price limit and orders to sell above the maximum trading price limit (in the case of Vertical Spreads) will be rejected by the System.

[67] *See* proposed Exchange Rules 532(b)(3)(iii) and (b)(4)(iii).

IV. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 1 and 2 are 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–MIAX–2021–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2021–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–58, and should be submitted on or before March 30, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of the notice of Amendment Nos. 1 and 2 in the **Federal Register**. As described more fully above, Amendment No. 1 revises the proposal to, among other things, indicate that, if enabled, the Managed Protection Override will apply to all of the price protections that are subject to the Managed Protection Override; add clarifying detail to the proposed definition of Butterfly Spread and to the Market Maker Single Side Protection; describe the treatment of orders and eQuotes priced outside the trading price limits in the proposed Butterfly Spread Variance, Calendar Spread Variance, and Vertical Spread Variance rules; add proposed Exchange Rule 532, Interpretation and Policy .01 to indicate that the System will apply the most conservative price protection when an order is eligible for multiple price protections; and describe the rationale for the pre-set value used in the proposed MIAX Strategy Price Protection Variance. Amendment No. 2 adds clarifying detail to the proposed MIAX Strategy Price Protection by describing how the price protection will apply to complex market orders. Amendment Nos. 1 and 2 raise no novel regulatory issues and provide additional detail and clarifications that help to more fully describe the operation of the proposed rules. In addition, the additional information in Amendment Nos. 1 and 2 assists the Commission in evaluating the Exchange's proposal and finding that it is consistent with the Act. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[68] that the proposed rule change (File No. SR–MIAX–2021–58), as modified by Amendment Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–04921 Filed 3–8–22; 8:45 am]

BILLING CODE 8011–01–P

[68] 15 U.S.C. 78s(b)(2).

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94354; File No. SR–ISE–2022–04]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Index Options Rules

March 3, 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 February 18, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rules at Options 3, Section 1, Days and Hours of Business; Options 4A, Section 11, Trading Sessions; and Options 4A, Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Section 4 which is currently reserved. Finally, the Exchange proposes to make a technical amendment to Options 7, Section 1, General Provisions.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rules at Options 3, Section 1, Days and Hours of Business; Options 4A, Section 11, Trading Sessions; and Options 4A, Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Section 4 which is currently reserved. Finally, the Exchange proposes to make a technical amendment to Options 7, Section 1, General Provisions. Each change is described below.

Options 3, Section 1

The Exchange proposes to amend Options 3, Section 1 concerning the Days and Hours of Business. The Exchange proposes to amend the title from ''Days and Hours of Business'' to ''Hours of Business.'' ISE recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[3] At this time the Exchange proposes to amend the first paragraph of Options 3, Section 1 which provides, ''The Board shall determine the days the Exchange shall be open for business (referred to as ''business days'') and the hours of such days during which transactions may be made on the Exchange.'' The Exchange proposes to remove this sentence and instead provide, ''ISE shall be open for business as provided within General 3, Rule 1030.'' This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the hours of operation of the System and specific products. The Exchange also proposes to remove paragraph (e) as holidays are addressed within General 3, Section 1030. The remainder of the paragraphs are proposed to be re-lettered.

Options 4A, Section 4

The Exchange proposes to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule ''Index Options Values for Settlement.'' Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current ISE Options 4A rules into proposed new Options 4A, Section 4 so all related rule text would be within the same rule.

Proposed Options 4A, Section 4(a) rule text is being relocated from current rule text within Options 4A, Section 12(e) without change. The rule text currently provides that where Exchange index options rules do not apply, ISE index options would settle based on the current index value used to settle the exercise of an index options contract, which would be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of The Options Clearing Corporation (''OCC'') or, if such day is not a business day, for the most recent business day.

Proposed Options 4A, Section 4(b) rule text is being relocated from current rule text within Options 4A, Section 11(g) without change. The rule text currently provides for the current index value in the instance the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day. In this case, the settlement price at expiration shall be the last reported sale price of the security from the previous trading day, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of OCC.

The Exchange also proposes to add new rule text within Options 4A, Section 4(c) which states,

> With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

This rule text is identical to the rule text within Phlx Options 4A, Section 4(c)(1) and Cboe Exchange, Inc. (''Cboe'') Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange's current practice.[4] The purpose of the proposed rule change is to clarify that the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Certain ISE rules may be interpreted in a manner that suggests that the current index value at expiration of any securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's ''primary market'' such as current Options 4A, Section 11(g). Because Options 4A, Section 11(g) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's value at expiration, the Exchange proposes to adopt the same rule text as Phlx and Cboe.[5]

The Exchange believes that Options 4A, Section 4 will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value [6] or the closing index value of the index.[7]

As noted above, the rule text within ISE Options 4A, Section 11(g) is proposed to be relocated to ISE Options 4A, Section 4(b) without change.

Options 4A, Section 12

The Exchange proposes to amend Options 4A, Section 12(a)(4) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed. The Exchange is also adding a reference to the p.m.-settled index options [8] which is proposed to be listed within proposed paragraph (a)(6)(i), described below. All of the indexes listed within Options 4A, Section 12(a)(4) are currently European-style. The p.m.-settled index option is

[3] *See* Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR–NASDAQ–2021–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). ISE's General 3 rules incorporate by reference The Nasdaq Stock Market LLC's General 3 Rules. Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

[4] *See* Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR–CBOE–2004–42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

[5] *See* Phlx Options 4A, Section 4(c)(1) and Cboe Rule 4.13 at .09 of Interpretations and Policies.

[6] The term ''current index value'' with respect to a particular index options contract means the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by the Exchange. The current index value with respect to a reduced-value long term options contract is one-tenth of the current index value of the related index option. The ''closing index value'' shall be the last index value reported on a business day. *See* ISE Options 4A, Section 2(e).

[7] *See* ISE Options 4A, Section 2(n). *See also* Supplementary Material .01 to Options 4A, Section 2.

[8] Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

part of a pilot program.[9] The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the way these products trade. The Exchange proposes to add the phrase ''on the following indexes'' to the end of Options 4A, Section 12(a)(4) and 12(a)(5) for clarity and relocate the word ''following'' within Options 4A, Section 12(a)(5), as well as make other minor technical amendments, in an effort to organize the lists of options indexes.

The Exchange proposes to add a new paragraph (a)(6) within Options 4A, Section 12 which describes the manner in which p.m.-settled index options [10] are handled today. This language is consistent with how p.m.-settled index options on ISE are treated today. This new paragraph would provide:

P.M.—Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on ISE:

This paragraph would serve to distinguish a.m.-settled and p.m.-settled index options as there is a similar paragraph regarding a.m.-settled index options within Options 4A, Section 12(a)(5).

The Exchange proposes to re-number current paragraph (a)(6) as (a)(6)(i) of Options 4A, Section 12. Current Options 4A, Section 12(a)(6) describes the Nasdaq 100 Reduced Value Index (''NQX'') which is a p.m.-settled index that is subject to a pilot program.[11] The Non-Standard Program, another p.m.-settled product, is separately described in detail within Options 4A, Section 12(b)(5).[12] These are both pilot programs. The proposed changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

Finally, the Exchange proposes to amend current Options 4A, Section 12(d) to remove references to a.m.-settled index options because p.m.-settled index options are listed on ISE as well. By removing the phrase, ''at the expiration of an A.M.-settled index option'' the paragraph would apply to both a.m.-settled and p.m.-settled index options. Currently, Options 4A, Section 12(d) applies to p.m.-settled index options. The Exchange is not otherwise amending Options 4A, Section 12(d). Options 4A, Section 12(d) describes the manner in which the reported level of the underlying index that is calculated by the reporting authority may differ from the level of the index that is separately calculated and reported by the reporting authority.

As noted above, Options 4A, Section 12(e) is proposed to be relocated to Options 4A, Section 4(a) without change.

Technical Amendments

The Exchange proposes to amend Options 7, Section 1, General Provisions, to add a ''(c)'' before certain defined terms to provide a way to cite to that rule text. This amendment is non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 3, Section 1

The Exchange's proposal to amend Options 3, Section 1 concerning the Days and Hours of Business is consistent with the Act. The proposal to amend the title from ''Days and Hours of Business'' to ''Hours of Business'' will bring greater clarity to the rule. BX recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.[15] Amending the rule text to reference General 3, Section 1030 will provide Members with a guidepost as to where to locate the rule that applies to the days the Exchange is open for business. Finally removing Options 3, Section 1(e) will avoid confusion.

Options 4A, Section 4

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule ''Index Options Values for Settlement'' is consistent with the Act. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change, so all related rule text would be within the same rule.

The relocation of certain rule text within Options 4A, without change, is non-substantive. The proposal to add rule text within Options 4A, Section 4(c), which is identical to rule text within Phlx Options 4A, Section 4(c)(1) and Cboe Rule 4.13 at .09 of Interpretations and Policies is consistent with the Act. The proposed language is consistent with current practice. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. Today, ISE rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's ''primary market'' such as current Options 4A, Section 11(g). Because Options 4A, Section 11(g) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's value at expiration, the Exchange

[9] *See* ISE Options 4A, Section 12(a)(6) (an index option) and Supplementary Material .07 to Options 4A, Section 12 (nonstandard program).

[10] The Nasdaq Options Market LLC (''NOM'') Rules at Options 4A, Section 12(a)(6) and Phlx Options 4A, Section 12(f) contain a paragraph describing p.m.-settled index options.

[11] *See* Securities Exchange Act Release Nos. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (Approval Order); 86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR–ISE–2019–18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR–ISE–2019–27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR–ISE–2020–18); 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR–ISE–2020–33); 91485 (April 6, 2021), 86 FR 19052 (April 12, 2021) (SR–ISE–2021–05); and 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021); and 93448 (October 28, 2021), 86 FR 60717 (November 3, 2021) (SR–ISE–2021–22).

[12] *See* Securities Exchange Act Release Nos. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR–ISE–2017–111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program); 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR–ISE–2019–01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR–ISE–2019–11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR–ISE–2019–28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR–ISE–2020–17); 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR–ISE–2020–34); 91486 (April 6, 2021), 86 FR 19048 (April 12, 2021) (SR–ISE–2021–06); and 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021) (SR–ISE–2021–23).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* note 3 above.

proposes to adopt rule text identical to Phlx and Cboe.[16]

The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value [17] or the closing index value of the index.[18]

Options 4A, Section 12

The Exchange's proposal to amend Options 4A, Section 12(a)(4) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed is consistent with the Act. The current language does not distinguish between a.m.-settled and p.m.-settled index options. Adding a paragraph describing a p.m.-settled index option [19] to proposed Options 4A, Section 12(a)(6) will make clear the index within proposed Options 4A, Section 12(a)(6)(i) is p.m.-settled. The only index that is p.m.-settled is part of a pilot program.[20] The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the way these products trade. Further, adding new paragraph (a)(6) within Options 4A, Section 12 which describes a p.m.-settled index options will serve to distinguish a.m.-settled and p.m.-settled index options.

Rewording current Options 4A, Section 12(d) to remove references to a.m.-settled index options is consistent with the Act as p.m.-settled index options are listed on ISE as well. By removing the phrase, ''at the expiration of an A.M.-settled index option'' the paragraph would apply to both a.m.-settled and p.m.-settled index options. Currently, Options 4A, Section 12(d) applies to p.m.-settled index options. Options 4A, Section 12(d) describes the way the reported level of the underlying index that is calculated by the reporting authority may differ from the level of the index that is separately calculated and reported by the reporting authority.

The remainder of the proposed changes to Options 4A, Section 12 are technical and non-substantive.

Technical Amendments

The Exchange's proposal to amend Options 7, Section 1, General Provisions, to add a ''(c)'' before certain defined terms to provide a way to cite to that rule text is a non-substantive amendment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 3, Section 1

The Exchange's proposal to amend Options 3, Section 1 concerning the Days and Hours of Business does not impose an undue burden on competition. The proposal to amend the title from ''Days and Hours of Business'' to ''Hours of Business'' will bring greater clarity to the rule. Amending the rule text to reference General 3, Section 1030 will provide Members with a guidepost as to where to locate the rule that applies to the days the Exchange is open for business. Finally, the removal of Options 3, Section 1(e) will avoid confusion.

Options 4A, Section 4

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, does not impose an undue burden on competition. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change and, therefore, those amendments are non-substantive. The proposal to add rule text within Options 4A, Section 4(c), which is identical to rule text within Phlx Options 4A, Section 4(c)(1) and Cboe Rule 4.13 at .09 of Interpretations and Policies, and which follows the Exchange's current practice, does not impose an undue burden on competition. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

Options 4A, Section 12

The Exchange's proposal to amend Options 4A, Section 12(a)(4) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed does not impose an undue burden on competition. The current language does not distinguish between a.m.-settled and p.m.-settled index options. Adding a paragraph describing a p.m.-settled index options [21] to proposed Options 4A, Section 12(a)(6) will make clear the index within proposed Options 4A, Section 12(a)(6)(i) is p.m.-settled. This p.m.-settled index is part of a pilot program.[22] The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. Rewording current Options 4A, Section 12(d) to remove references to a.m.-settled index options does not impose an undue burden on competition as p.m.-settled index options are listed on ISE as well. By removing the phrase, ''at the expiration of an A.M.-settled index option'' the paragraph would apply to p.m.-settled index options as well, as is the case today.

Technical Amendments

The Exchange's proposal to amend Options 7, Section 1, General Provisions, to add a ''(c)'' before certain defined terms to provide a way to cite to that rule text is a non-substantive amendment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and

[16] *See* note 5 above.
[17] *See* note 6 above.
[18] *See* note 7 above.
[19] *See* note 8 above.
[20] *See* note 9 above.
[21] *See* note 8 above.
[22] *See* note 9 above.
[23] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) [25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As the proposal raises no new or novel issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[27]

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–ISE–2022–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2022–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2022–04 and should be submitted on or before March 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–04955 Filed 3–8–22; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Release of Federally Obligated Land at the Myrtle Beach International Airport (MYR), Myrtle Beach, SC

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

ACTION: Notice.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Myrtle Beach International Airport (MYR), Myrtle Beach, South Carolina.

DATES: Comments must be received on or before April 8, 2022.

ADDRESSES: Documents are available for review by prior appointment at the following location: Atlanta Airports District Office, Attn: Joseph Robinson, Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, Telephone: (404) 305–6749.

Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Joseph Robinson, Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Breck Dunne, Director of Airport Development, Myrtle Beach International Airport at the following address: 1100 Jetport Rd., Myrtle Beach, South Carolina 29577.

FOR FURTHER INFORMATION CONTACT: Joseph Robinson, Airport Planner, Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, (404) 305–6749. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release and sell one tract of land consisting of approximately 21.12 acres of airport property at the Myrtle Beach International Airport (MYR) under the provisions of 49 U.S.C. 47107(h)(2). On March 2, 2022, the FAA determined the request to release property at the Myrtle Beack International Airport (MYR) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Myrtle Beach International Airport (MYR) is proposing the release of airport property containing 20.12 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Myrtle Beach International Airport (MYR) being changed from aeronautical to non-aeronautical use and release the lands from the

conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to dispose of the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in Atlanta, Georgia on March 4, 2022.

Joseph Parks Preston,

Assistant Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2022–04988 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0045]

Metro-North Commuter Railroad's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on February 22, 2022, Metro-North Commuter Railroad (MNR) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by March 29, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0045. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with 49 CFR part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under Title 49 Code of Federal Regulations (CFR) Section 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on February 22, 2022, MNR submitted an RFA to its PTCSP for its Advanced Civil Speed Enforcement System II (ACSES II) and that RFA is available in Docket No. FRA–2010–0045.

Interested parties are invited to comment on MNR's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–04995 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Toyota Motor North America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Toyota Motor North America, Inc.'s (Toyota) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its Lexus IS vehicle line beginning in model year (MY) 2023. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

DATES: The exemption granted by this notice is effective beginning with the 2023 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. Chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major

replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at 49 CFR part 541 (theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.[1]

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.[2] Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers Toyota Motor North America, Inc.'s (Toyota) petition for its Lexus IS vehicle line beginning in MY 2023.

I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention,* Toyota petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2023. Toyota petitioned under 49 CFR 543.6, *Petition: Specific content requirements,* which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) Facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.[3]

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,[4] and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.[5]

The following sections describe Toyota's petition information provided pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention.* To the

[1] 49 CFR 543.7 specifies that the manufacturer must include a statement that their entire vehicle line is equipped with an immobilizer that meets one of the following standards:

(1) The performance criteria (subsections 8 through 21) of C.R.C, c. 1038.114, *Theft Protection and Rollaway Prevention (in effect March 30, 2011),* as excerpted in appendix A of [part 543];

(2) National Standard of Canada CAN/ULC–S338–98, *Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization* (May 1998);

(3) United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), *Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS)* in effect August 8, 2007; or

(4) UN/ECE Regulation No. 116 (ECE R116), *Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use* in effect on February 10, 2009.

[2] 49 U.S.C. 33106(d).

[3] 49 CFR 543.6(a)(3).

[4] 49 CFR 543.6(a)(4).

[5] 49 CFR 543.6(a)(5).

extent that specific information in Toyota's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice.[6]

II. Toyota's Petition for Exemption

In a petition dated September 16, 2021, Toyota requested an exemption from the parts-marking requirements of the theft prevention standard for the Lexus IS vehicle line beginning with MY 2023.

In its petition, Toyota provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Lexus IS vehicle line. Toyota stated that its MY 2023 Lexus IS vehicle line will be installed with an engine immobilizer device as standard equipment, as required by 543.6(a)(1). Toyota stated that it will offer an entry and start system on its Lexus IS vehicle line. Specifically, key components of the ''smart entry and start'' system will include a certification engine control unit (ECU), engine switch, security indicator, door control receiver, electrical key, ID code box, and an engine control module (ECM). Toyota stated that there will also be position switches installed on the vehicle to protect the hood and doors from unauthorized tampering/opening. Toyota further explained that locking the doors can be accomplished through use of a key, wireless switch or its smart entry system, and that unauthorized tampering with the hood or door without using one of these methods will cause the position switches to trigger its antitheft device to operate. Toyota will also incorporate an audible and visual alarm system on its vehicle line, when unauthorized access is attempted, the horn will sound and the lights will flash.

Pursuant to Section 543.6(a)(3), Toyota explained that its ''smart entry and start'' system is activated when the engine switch is pushed from the ''ON'' ignition status to any other status. The certification ECU then performs the calculation for the immobilizer and the immobilizer signals the ECM to activate the device. Toyota also explained that its ''smart entry and start'' system is deactivated after the driver pushes the engine switch and the key is verified, the certification ECU and ID code box receives verification of a valid key, the certification ECU allows the ECM to start the engine. Toyota stated that in its system, a security indicator is installed notifying the user and others inside and outside the vehicle with the status of the immobilizer. Toyota further explained that the security indicator flashes continuously when the immobilizer is activated, and turns off when it is deactivated.

As required in section 543.6(a)(3)(v), Toyota provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Toyota conducted tests based on its own specified standards. Toyota provided a detailed list of the tests conducted (*i.e.,* high and low temperature operation, strength, impact, vibration, electro-magnetic interference, etc.). Toyota stated that it believes that its device is reliable and durable because it complied with its own specific design standards and the antitheft device is installed on other vehicle lines for which the agency has granted a parts-marking exemption. As an additional measure of reliability and durability, Toyota stated that its vehicle key cylinders are covered with casting cases to prevent the key cylinder from easily being broken. Toyota further explained that there are approximately 10,000 combinations for inner cut keys which makes it difficult to unlock the doors without using a valid key because the key cylinders would spin out and cause the locks to not operate.

Toyota stated that its Lexus IS vehicle has already been equipped with an immobilizer since MY 2014 as standard equipment. Toyota also stated that at the time of the petition submission, theft rate data for the MY 2023 Lexus IS vehicle line is not available. However, Toyota compared its proposed device to other devices NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Toyota compared its proposed device to that which has been installed on the Nissan Altima vehicle line, which was granted a parts-marking exemption from 49 CFR part 541 by the agency beginning with MY 2000 vehicles. Toyota also referenced the NHTSA theft rate data published for the Altima before and after being equipped with a standard immobilizer showing the average theft rate drop to 3.0 per 1,000 vehicles (2000–2006) compared to 5.3 per 1,000 vehicles (1996–1999). Toyota stated that the data for the Altima represents an approximate 43% decrease in a theft rate with an immobilizer. (see 82 FR 28246). Therefore, Toyota concluded that the antitheft device proposed for its Lexus IS vehicle line is no less effective than those devices on the lines for which NHTSA has already granted full exemption from the parts-marking requirements. Toyota stated that it believes that installing the immobilizer device as standard equipment reduces the theft rate for the Lexus IS vehicle line and expects it to experience comparable effectiveness and ultimately be more effective than parts-marking labels.

III. Decision To Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Toyota has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Toyota provided about its antitheft device. NHTSA believes, based on Toyota's supporting evidence, the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that Toyota's antitheft device will provide the five types of performance features listed in section 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Toyota decides not to use the exemption for its requested vehicle line,

[6] 49 CFR 512.20(a).

the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Toyota wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.'' [7]

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if Toyota contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Toyota's petition for exemption for the Lexus IS vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2023 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2022–04929 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–59–P

[7] The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if a manufacturer with an exemption contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; North American Subaru, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the North American Subaru, Inc.'s (Subaru) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its BRZ vehicle line beginning in model year (MY) 2023. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. Subaru also requested confidential treatment for specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

DATES: The exemption granted by this notice is effective beginning with the 2023 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at 49 CFR part 541 (theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition NHTSA for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that NHTSA decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.[1]

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which

[1] 49 CFR 543.7 specifies that the manufacturer must include a statement that their entire vehicle line is equipped with an immobilizer that meets one of the following standards:

(1) The performance criteria (subsections 8 through 21) of C.R.C, c. 1038.114, *Theft Protection and Rollaway Prevention (in effect March 30, 2011),* as excerpted in appendix A of [part 543];

(2) National Standard of Canada CAN/ULC–S338–98, *Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization* (May 1998);

(3) United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), *Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS)* in effect August 8, 2007; or

(4) UN/ECE Regulation No. 116 (ECE R116), *Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use* in effect on February 10, 2009.

a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.[2] Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers North American Subaru, Inc.'s (Subaru) petition for its BRZ vehicle line beginning in MY 2023.

I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention,* Subaru petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2023. Subaru petitioned under 49 CFR 543.6, *Petition: Specific content requirements,* which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) Facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.[3]

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,[4] and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.[5]

The following sections describe Subaru's petition information provided pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention.* To the extent that specific information in Subaru's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice.[6]

II. Subaru's Petition for Exemption

In a petition dated September 7, 2021, Subaru requested an exemption from the parts-marking requirements of the theft prevention standard for the BRZ vehicle line beginning with MY 2023.

In its petition, Subaru provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the BRZ vehicle line. Subaru stated that its MY 2023 BRZ vehicle line will be installed with an engine immobilizer device as standard equipment, as required by 543.6(a)(1). Subaru also stated it will offer a ''Smart Key'' system on all trim lines, which includes keyless access and push start functions. Specifically, key components of the ''smart entry'' system will include a keyless access engine control unit (ECU), steering lock ECU, engine ECU, an interior antenna, push button ignition switch, and an access key. Subaru also stated that there is a diagnosis tool used to perform a key ID code registration to the immobilizer module. Subaru stated that its antitheft device will also include an alarm system as standard equipment. Subaru stated that its alarm system will monitor door status and key ID, and opening of a door or hood will activate the alarm system. Subaru further stated that visual and audio features will attract attention to the efforts of an unauthorized person to enter or move the vehicle by sounding the vehicle's horn and illuminating the 4-way flashing hazard lamps.

Pursuant to section 543.6(a)(3), Subaru explained the means and process by which the immobilizer device is activated and functions. Subaru stated that its antitheft system and immobilization features are designed and constructed within the vehicle's overall CAN (controller area network) electrical architecture which means the antitheft system cannot be separated by rerouting or tapping into particular wires or connectors. Subaru further stated that the immobilization features will prevent operation of the vehicle by preventing the starting or operation of the engine even if an unauthorized person was to gain entry into the vehicle.

Subaru stated that its BRZ antitheft system is activated when the ignition is at the ''OFF'' position or the door is opened/closed while propulsion system is off and ignition is at the ''ON'' or ''ACC'' position. Deactivation occurs after the driver gets in the vehicle with the access key and pushes the button ignition switch while pressing the brake pedal, and random codes are then transmitted to the access key from the keyless access ECU through the interior antenna. Once the access key receives the signal, it returns the encrypted code. When pushing the push button ignition switch once again, the power is turned off and the security indicator lamp blinks. Subaru stated that this method of activation will facilitate and encourage its activation by motorists because it requires nothing more than the removal

[2] 49 U.S.C. 33106(d).

[3] 49 CFR 543.6(a)(3).

[4] 49 CFR 543.6(a)(4).

[5] 49 CFR 543.6(a)(5).

[6] 49 CFR 512.20(a).

of the key from the ignition switch when the vehicle is not being used.

As required in section 543.6(a)(3)(v), Subaru provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Subaru conducted tests based on its own specified standards and provided a detailed list of the tests conducted. Subaru stated that it believes that its device is reliable and durable because it complied with its own specific design standards and the antitheft device is installed on other vehicle lines for which the agency has granted a parts-marking exemption.

Subaru stated that its theft rates have been low per the National Insurance Crime Bureau's 2019 report on America's 10 most stolen vehicles. However, Subaru compared its proposed device to other Subaru antitheft devices that NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Specifically, Subaru stated that the theft rate of the MY 2008 Impreza (not parts marked, standard engine immobilizer) decreased by almost 51% as compared to the MY 2007 Impreza (parts marked with optional engine immobilizer). Subaru stated that the antitheft system included on the BRZ vehicle line is the same system employed on the Subaru Ascent car line, for which NHTSA determined that the system was likely as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.[7]

Subaru also stated that the National Crime Information Center's (NCIC) theft data showed that there was a 70% reduction in theft experienced when comparing the MY 1997 Ford Mustang vehicle thefts (with immobilizers) to MY 1995 Ford Mustang vehicle thefts (without immobilizers). On the basis of the above and other cited comparisons, Subaru has concluded that its proposed immobilizer system is no less effective than those devices installed on lines for which NHTSA has already granted full exemptions.

III. Decision To Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541 or if deemed approved under 49 U.S.C. 33106(d). NHTSA finds that Subaru has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Subaru provided about its antitheft device.

The agency concludes that Subaru's antitheft device will provide the five types of performance features listed in section 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Subaru decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if a manufacturer to which an exemption has been granted wishes in the future to modify the device on which the exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.'' [8]

For the foregoing reasons, the agency hereby announces a grant in full of Subaru's petition for exemption for the BRZ vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2023 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2022–04928 Filed 3–8–22; 8:45 am]

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[7] 82 FR 57650 (Dec. 06, 2017).

[8] The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if a manufacturer with an exemption contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0009]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Uniform Procedures for State Highway Safety Grant Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a reinstatement of a previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This is a request for approval for reinstatement of a previously-approved collection of information for NHTSA's Highway Grant Program, which includes State Highway Safety Program grants, the National Priority Safety Program grants, and a separate grant on racial profiling data collection. The purpose of the information collection is to collect information necessary for NHTSA to issue grants to States. To receive grants, a State must submit a

Highway Safety Plan (HSP) that supports its qualifications for receiving grant funds. Specifically, the HSP consists of information on the highway safety planning process, performance report, performance plan, problem identification, highway safety countermeasure strategies, planned activities and funding amounts, certifications and assurances, and application materials that cover Section 405 grants and the reauthorized Section 1906 grant. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 9, 2021. NHTSA received three comments. A summary of the comments and NHTSA's response to those comments is provided below.

DATES: Comments must be submitted on or before April 8, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Barbara Sauers, Regional Operations and Program Delivery, NRO–011, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590; Telephone: 202–366–0144. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted to OMB.

Title: Uniform Procedures for State Highway Safety Grant Programs.

OMB Control Number: 2127–0730.

Form Number: None.

Type of Request: Reinstatement of a previously approved information collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years from date of approval.

Summary of the Collection of Information:

The Fixing America's Surface Transportation Act (FAST), Public Law 114–94, authorizes the National Highway Traffic Safety Administration (NHTSA) to issue highway safety grants to States under Chapter 4 of Title 23, U.S.C. Specifically, these grant programs include the Highway Safety Program grants (23 U.S.C. 402 or Section 402), the National Priority Safety Program grants (23 U.S.C. 405 or Section 405) and a separate grant on racial profiling data collection contained in a previous authorization that was revised and restored under the FAST Act (Public Law 109–59, Sec. 1906 or Section 1906, as amended by Sec. 4011, Public Law 114–94).

For all of these grants, as directed in statute, NHTSA uses a consolidated application process that relies on the Highway Safety Plan (HSP) that States [1] submit under the Section 402 program as a single application. The information required to be submitted for these grants includes the HSP consisting of information on the highway safety planning process, performance report, performance plan, problem identification, highway safety countermeasure strategies, projects and funding amounts, certifications and assurances, and application materials that cover Section 405 grants and the reauthorized Section 1906 grant.[2] States also must submit an annual report evaluating their progress in achieving performance targets. In addition, as part of the statutory criteria for Section 405 grants covering the areas of occupant protection, traffic safety information system improvement and impaired driving countermeasures, States may be required to receive assessments of their State programs in order to receive a grant.[3] States must provide information and respond to questions as part of the assessment process.

Consistent with the statute, NHTSA has implemented a final rule that creates uniform procedures for States to apply for grant funds (83 FR 3466, January 25, 2018). These procedures specify the information that is required to be submitted to receive a grant and the type of information required to verify performance under the grants.

As indicated above, States may be required to receive an assessment of certain covered programs in order to be eligible for some grants under Section 405. Separate from these requirements, States also may request assessments in these areas at their discretion. NHTSA uses two different assessment approaches based on the traffic safety area covered. For occupant protection and impaired driving, assessments are based on NHTSA's *Uniform Guidelines for State Highway Safety Programs,* which are required by Congress and periodically updated through a process that seeks public comment.[4] State programs are assessed against these uniform guidelines by a team of subject matter experts. The assessment team produces a final report with recommendations on how the State can improve the effectiveness of its program. As part of the process, States provide written materials in response to requests from the assessment team and participate in a comprehensive interview process. For traffic safety information systems, States respond to questions based on NHTSA's *Traffic Records Program Assessment Advisory* (DOT HS 812 601), which describes an ideal traffic records system. The questions cover nine topical areas and examine how well a State plans, collects, manages, and integrates information from several State traffic records systems.[5] Responses are

[1] While the grant programs are available for the 50 States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Bureau of Indian Affairs on behalf of the Indian Country, NHTSA will refer to the respondents to the Uniform Procedures for State Highway Safety Grant Programs information collection as ''States.''

[2] Section 405 grants cover the following: Occupant Protection Grants; State Traffic Safety Information System Improvements Grants; Impaired Driving Countermeasures Grants (including Alcohol-Ignition Interlock Grants and 24–7 Sobriety Program Grants); Distracted Driving Grants; Motorcyclist Safety Grants; State Graduated Driver Licensing Incentive Grants; and Nonmotorized Safety Grants. Section 1906 is a separate racial profiling data collection grant.

[3] Under occupant protection grants, one criterion that a State with a lower belt use rate may use to receive a grant is to complete an assessment of its occupant protection program once every three years (23 U.S.C. 405(b)(3)(B)(ii)(VI)(aa)); and another criterion is a comprehensive occupant protection program that includes a program assessment conducted every five years as one of its elements (23 U.S.C. 405(b)(3)(B)(ii)(V)(aa); 23 CFR 1300.21(e)(5)(i)). Under traffic safety system information system improvement grants, a State must have an assessment of its highway safety data and traffic records system once every 5 years in order to receive a grant (23 U.S.C. 405(c)(3)(E)). Under impaired driving countermeasure grants, a State with high average impaired driving fatality rates must have an assessment of its impaired driving program once every 3 years in order to receive a grant. (23 U.S.C. 405(d)(3)(C)(i)(I)).

[4] The *Uniform Guidelines for State Highway Safety Programs* are available online at *https://one.nhtsa.gov/nhtsa/whatsup/tea21/tea21programs/index.htm.*

[5] The *Traffic Records Program Assessment Advisory* is available online at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812601.*

evaluated by subject matter experts, and a final report is provided to the State with recommendations for improvement.

Description of the Need for the Information and Proposed Use of the Information:

As noted above, the statute provides that the HSP is the application basis for grants each fiscal year. The information is necessary to determine whether a State satisfies the Federal criteria for grant awards. The annual report tracks progress in achieving the aims of the grant program. The information is necessary to verify performance under the grants and to provide a basis for improvement. As specified in statute, States may be required to receive an assessment of certain covered programs. In other instances, States may opt to receive an assessment in order to use that assessment as one of several options to qualify for a grant under Section 405. The information provided by a State allows subject matter experts to provide recommendations for the purpose of improving the covered areas.

Public Comments

A **Federal Register** notice with a 60-day comment period soliciting public comments on the information collection was published on February 9, 2021 (86 FR 8832). NHTSA received three comments from the Governors Highway Safety Association (GHSA), the Tennessee Highway Safety Office, and an anonymous commenter. Comments addressed the timing of the Highway Safety Program applications and Annual Report, estimated burden hours, and the inclusion of other activities in the burden estimates.

General

In general, commenters indicated support for the agency's collection of information and its use of a single, unified annual Highway Safety Plan. Commenters also included other topics unrelated to this PRA which will be addressed separately.

Timing of Highway Safety Plan Application and Annual Report

Commenters raised issues with the timing of the HSP application. Tennessee commented that the ''deadline is so early in the year'' and that ''States need time to look at the previous year's uncertified FARS data (State data) to determine issue areas to address for the upcoming grant year and the most current certified FARS data.'' Furthermore, the comment noted that the deadline of July 1 necessitates the use of amendments to supply information not available at the time of the application.

While NHTSA recognizes the potential difficulty in submitting applications by the July 1 application date, NHTSA does not have discretion to adjust the application deadline. The July 1 application date is set forth in statute.[6] However, NHTSA would like to reiterate that while FARS data is to be used to report progress on the core performance targets, States can use other sources of data to help determine their targets and priority problem areas. It is correct that States that do not know which projects will be funded at the time of application will need to follow up by providing a list of projects in an amendment to their application; however, States can provide this list in any format they choose as long as the four required data elements are included (project agreement number, subrecipient, amount of federal funds, and eligible use of funds). While NHTSA believes that this type of list is common and exists as a normal business practice in most States (and the majority of States (68%) provided a list with their 2021 application) we agree that extra time may be needed. Accordingly, we have adjusted our estimated burden hours (see below).

Commenters also raised concerns regarding the timing of the annual report. GHSA commented that it is challenging to meet the due date for the annual report due to it coinciding with year-end closeout and the winter holidays. They also noted the new option in the revised 2 CFR 200[7] that allows NHTSA to extend the closeout and reporting deadline from 90 days to 120 days beginning with FY22. The timing of the annual report is set forth in NHTSA's regulation at 23 CFR 1300.35 and was created to align with the 90-day government-wide timing requirements that existed at the time our regulation was published in 2018. As GHSA notes, the government-wide regulation has since been updated to allow a longer, 120-day time frame for closeout and reporting; NHTSA will take this into consideration when we next revise our own implementing regulation. Another commenter said that automating the annual report could help reduce the burden.

Estimated Burden Hours

Both GHSA and the anonymous commenter stated that they believe NHTSA under-estimated the burden of time involved in developing the HSP and annual report. One State that supplied comments to GHSA suggested that preparing the HSP, including both the Section 402 and 405 grant programs, likely takes over 400 hours. In support, GHSA commented that ''HSP development involves not just planning within the SHSO but interaction with other partners as well to select projects and develop agreements.'' GHSA acknowledged, however, the difficulty of developing an estimate across States since the number will ''differ significantly from State to State.'' They added that States do not track time spent meeting these requirements and ''are involved in preparing HSPs and Annual Reports intermittently over time in addition to implementing programs and performing other duties.''

NHTSA agrees that an average may not be reflective of the experience of some States. While our initial burden hour estimate is not too dissimilar from GHSA's (380 vs 400), after meeting to discuss the details of their comments, we agree that more time should be added to account for HSP planning activities which were not part of our original estimate. We agree that working with partners is necessary for planning and carrying out the program, but these activities are also normal every-day program planning and operation activities that are not solely needed for the application process. In response to GHSA's comment and after further review of the issues, we have increased the estimate for the HSP application to 410 hours. We also revised our estimate for completing the annual report. One State reported to GHSA that it could take 100–120 hours. While we believe this estimate is high, we have increased our estimate to 80 hours, which is an increase of 40 hours from our original estimate.

GHSA also noted that the time burden required for an assessment is significant. While no commenters provided any estimates for how long assessments take, they expressed that assessments are similar to conference planning and include preparing materials, scheduling participants, making travel arrangements, arranging for audio visual, and coordination of facilities. NHTSA's estimate only covered the background material collection, responding to questions and participating in interviews during the assessment week. In response to these comments, NHTSA has increased the estimated burden hours for occupant protection and impaired driving assessments to 88 hours. For traffic records assessments, NHTSA continues to estimate that the burden hours for a traffic records assessment will be 123

[6] 23 U.S.C. 402(k)(2).

[7] See 85 FR 49506 (Aug. 13, 2020), effective November 12, 2020.

hours per respondent because these assessments are conducted virtually and involve submission of information submitted via email as opposed to through interviews.

Other Comments

While commenting on the 60-day notice, GHSA took the opportunity to include comments regarding other aspects of the grant program, not necessarily related to the information collection request. Some of the comments addressed aspects of the grant program which cannot be changed since they are part of the grant program regulation (23 CFR 1300) or statutes. NHTSA acknowledges these additional topics raised that are unrelated to this information collection request and will respond to them separately through other means.

Affected Public:

This collection impacts the fifty-seven entities that are eligible to apply for grants under the NHTSA Highway Grant Program (the fifty States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and the Bureau of Indian Affairs on behalf of the Indian Country).

This collection also impacts the subject matter experts and administrative assistants who are involved in assessments for the grant program. These subject matter experts are recruited by NHTSA based on recommendations from NHTSA Regional Offices and the State Highway Safety Offices. All new occupant protection and impaired driving assessors complete an e-learning course, Conducting Highway Safety Program Assessments.The course is self-paced and entirely on-line. Each impaired driving and occupant protection assessment team consists of five (5) assessors and an administrative assistant. For traffic records assessments, NHTSA uses a contractor to recruit and train the assessors for the online traffic records assessment conducted using NHTSA's Traffic Records Improvement Program Reporting System (TRIPRS). All subject matter experts are current or former members of State Traffic Records Coordinating Committees. There are between 10 to 14 assessors for each traffic records assessment.

Estimated Number of Respondents:

There are 57 potential State respondents (the fifty States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and the Bureau of Indian Affairs on behalf of the Indian Country).

NHTSA estimates there will be approximately 260 assessors per year. This estimate includes assessors and administrative assistants. Each occupant protection or impaired driving assessment involves five (5) subject matter experts and one (1) administrative assistant. NHTSA estimates that 13 occupant protection and impaired driving assessments will be completed each year, for a total of 78 respondents. Each traffic records assessment involves approximately thirteen (13) subject matter experts. NHTSA estimates that 14 traffic records assessments are completed each year, for a total of 182 traffic records assessors.

Frequency:

Applications for grant funding and annual reporting are submitted once a year and assessments are conducted once every three or five years.

Number of Responses:

NHTSA estimates that it will receive 57 Section 402 grant applications, 56 Section 405 grant applications (except for impaired driving countermeasures, motorcyclist safety and nonmotorized grants), and 52 Section 405 impaired driving countermeasures, motorcyclist safety and nonmotorized grant applications. These estimates are based on the number of eligible respondents each year for each of the grants.

NHTSA estimates that there will be 9 State responses for assessments for Section 405 occupation protection grants, 14 State responses for assessments for Section 405 traffic safety information system improvement grants, and 4 State responses for assessments for Section 405 impaired driving countermeasures grants annually. Further, NHTSA estimates that there will be 54 subject matter expert responses for Section 405 occupation protection grants, 182 subject matter expert responses for assessments for Section 405 traffic safety information system improvement grants, and 24 subject matter expert responses for assessments for Section 405 impaired driving countermeasures grants.

Estimated Total Annual Burden Hours: 39,550.

The estimated burden hours for the grant application and annual report part of the collection of information are based on all eligible respondents each year for each of the grants:

- Section 402 grants: 57 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Bureau of Indian Affairs);
- Section 405 Grants (except Impaired Driving Countermeasures, Motorcyclist Safety and Nonmotorized Grants) and Section 1906 Grant: 56 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and
- Section 405, Impaired Driving Countermeasures, Motorcyclist Safety and Nonmotorized Grants: 52 (fifty States, the District of Columbia, and Puerto Rico).

Under the grant application and annual report requirements for Sections 402 and 405, we estimate that it will take each respondent approximately 490 hours to collect, review and submit the required information to NHTSA (220 burden hours for 402 grant applications, 190 for 405 and 1906 grant applications, and 80 hours for annual reports).[8] Therefore, NHTSA estimates the total annual burden for Section 402 grant applications to be 12,540 hours (57 respondents × 220 hours), the total annual burden for Section 405 and 1906 grant applications to be 10,640 hours (56 respondents × 190 hours), and the total annual burden for annual reports to be 4,560 (57 respondents × 80 hours).

The estimated burden hours for the assessment part of the collection of information are based on the average number of State assessments that are carried out each year in each of the covered grant areas: [9] NHTSA estimates that there will be 9 assessments for Section 405 occupant protection grants, 14 assessments for the Section 405 traffic safety information system improvement grants, and 4 assessments for the Section 405 impaired driving grant each year. Based on this information and the hours listed below, the estimated annual burden hours for all State respondents is 2,866 hours.

As the requirements for the program assessments vary, the burden for each type is calculated separately. For traffic safety information system improvement grants, we estimate that it takes 123 hours to respond to questions under the assessment. For occupant protection and impaired driving countermeasures grants, we estimate that it takes 88 hours to provide the required information and

[8] Please note that the burden estimates for 405 and 1906 applications are based on every applicant applying for a grant under all program areas. Marginally, this may overestimate the total burden as all applicants will not apply for a grant in each program area each year.

[9] Assessment average is based on the total number of assessments conducted each year and divided by the number of years since the inception of assessment requirements for certain grants under MAP–21, Public Law 112–141.

respond to questions under an assessment.

Commenters did not question NHTSA's estimates for labor cost. For the costs associated with respondents preparing application materials NHTSA used the estimated average wage for ''Management Analysts,'' Occupation Code 13–1111. The Bureau of Labor Statistics estimates that the average hourly wage for management analysts in State and local government is $31.95.[10] The Bureau of Labor Statistics estimates that wages for State and local government workers represent 61.8% of total compensation costs.[11] Therefore, NHTSA estimates the hourly labor costs to be $51.70 and estimates that hourly labor cost associated with preparing materials to be $24,056 per respondent. If all eligible States applied for and received grants for all programs (and including the annual number of assessment responses required from States), the total labor costs on all State respondents would be $1,582,329.

These estimates are based on every eligible respondent submitting the required information for every available grant. However, not all States apply for and receive a grant each year under each of these programs. In addition, under Section 405 grants, some requirements permit States to submit a single application covering multiple years allowing States to simply recertify in subsequent years.

TABLE 1—ESTIMATED BURDEN HOURS AND LABOR COSTS FOR STATE RESPONDENTS

Information collection	Frequency	Number of respondents	Burden hours per respondent	Hourly labor costs	Total labor costs	Total burden hours
Section 402 Grant Application	Yearly	57	220	$51.70	$648,318	12,540
405 and 1906 Grant Applications	Yearly	56	190	51.70	550,088	10,640
Annual Report	Yearly	57	80	51.70	235,752	4,560
405b Assessment	Every 3 years	9	88	51.70	40,946	792
405c Assessment	Every 5 years	14	123	51.70	89,027	1,722
405d Assessment	Every 3 years	4	88	51.70	18,198	352
Totals					$1,582,329	30,606

In addition to the burden hours for State respondents, this information collection also involves burden hours for subject matter experts who assess the States and burden hours for administrative assistants. NHTSA estimates the burden on subject matter experts based on the number assessments that will be performed each year, the number of individuals involved with each assessment, and the estimated time for each assessor. As stated above, NHTSA estimates that there will be 9 assessments for Section 405 occupant protection grants, 14 assessments for the Section 405 traffic safety information system improvement grants, and 4 assessments for the Section 405 impaired driving grant each year. Each impaired driving and occupant protection assessment team consists of five (5) assessors and an administrative assistant. For traffic records assessments, there are between 10 to 14 assessors. For purposes of estimate the total annual burden hours, NHTSA estimates that there will be approximately 13 assessors for each traffic records assessment.

For occupant protection and impaired driving assessments NHTSA estimates that assessors spend approximately 80 hours of work on each assessment, based on the following assumptions: 46 hours for the interviews and panel discussions and 34 hours for pre- and post- assessment activities, to include reviewing: (1) Briefing book materials; (2) resources on the State Highway Safety Office's website, and (3) reviewing comments and/or suggestions submitted from the State after their review of the assessment final report.In addition, an administrative assistant is expected to spend approximately 46 hours preparing for the interviews and panel discussions and 18 hours for pre- and post- assessment activities, to include coordinating logistics, assisting team members and editing the document. Therefore, NHTSA estimates the total annual burden for Section 405b (occupant protection) assessment subject matter experts to be 4,176 hours ((5 SME × 80 hours × 9 assessments) + (1 Admin × 64 hours × 9 assessments)) and the total annual burden for Section 405d (impaired driving) assessment subject matter experts to be 1,856 hours ((5 SME × 80 hours × 4 assessments) + (1 Admin × 64 hours × 4 assessments)).

For traffic records assessments (Section 405c), NHTSA estimates that each subject matter expert will spend approximately 16 hours on an assessment. Therefore, NHTSA estimates the total annual burden for traffic records subject matter experts to be 2,912 hours (13 SME × 16 hours × 14 assessments).

To calculate the cost associated with the assessors time, NHTSA uses the costs paid to the assessors. For occupant protection and impaired driving assessments, the State pays each subject matter expert $2,700, which translates to $33.75 per hour and pays each administrative assistant $2,100, which translates to $32.80 per hour. For traffic records assessments NHTSA pays each assessor $2,100 for their time, or $131.25 per hour. Table 2 provides a summary of the burden hours for subject matter expert respondents.

[10] *See* May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100—Motor Vehicle Manufacturing, available at *https://www.bls.gov/oes/current/naics4_999200.htm* (accessed January 6, 2021).

[11] *See* Table 1. Employer Costs for Employee Compensation by ownership, available at *https://www.bls.gov/news.release/ecec.t01.htm*

TABLE 2—ESTIMATED BURDEN HOURS AND LABOR COSTS FOR SUBJECT MATTER EXPERT RESPONDENTS

Information collection	Number of respondents per assessment	Number of assessments per year	Burden hours per respondent	Hourly labor costs	Total labor costs	Total burden hours
405b Assessment (every 3 years)	5 SME	9	80	$33.75	$121,500	3,600
	1 Admin		64	32.80	18,893	576
405c Assessment (every 5 years)	13 SME	14	16	131.25	382,200	2,912
405d Assessment (every 3 years)	5 SME	4	80	33.75	54,000	1,600
	1 Admin		64	32.80	8,397	256
Total					584,990	8,944

Accordingly, NHTSA estimates the total burden hours for this information collection request is 39,550 hours and the associated labor costs is estimated to be $2,167,319.

Estimated Total Annual Burden Cost: $422,500.

Apart from the costs incurred by States for labor associated with the burden hours, States are expected to incur other costs in conjunction with the assessments. There are other costs involved related to conducting the event such as subject matter expert stipend, travel and per diem. These costs are approximately $32,500 per occupant protection and impaired driving assessment. For the thirteen planned assessments, the cost is estimated to be $422,500.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued on March 3, 2022.

Barbara F. Sauers,

Acting Associate Administrator for Regional Operations and Program Delivery.

[FR Doc. 2022–04932 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before April 8, 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: 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 March 02, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
10511–M	Schlumberger Technology Corp.	173.304a	To modify the special permit to authorize an additional packaging configuration.
11650–M	Autoliv Asp, Inc	173.301(a)(1), 173.302(a)	To modify the special permit to authorize cylinder weld studs.
13112–M	Cobham Mission Systems Orchard Park Inc.	173.302a(a)(1)	To modify the special permit to update the drawing revision number of the packaging.
14919–M	Joyson Safety Systems Acquisition LLC.	173.301(a)(1), 173.302a, 178.65(f)(2).	To modify the special permit to authorize a different pressure test and alternative safety control measures.
20907–M	Versum Materials Us, LLC	171.23(a)(1), 171.23(a)(3)	To modify the special permit to replace paragraph 7.b.(6) with a 5-year service life restriction.
20963–M	Lg Energy Solution Wroclaw SP ZOO.	172.101(j)	To modify the special permit to include additional cells in the authorized battery modules.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21162–N	Hexagon Masterworks, Inc	173.301(a)(1)	To authorize the transportation in commerce of partially filled composite cylinders with Hydrogen gas with a maximum charged pressure less than 5% of the COPV designed service/operating pressure.
21299–N	Orbital Sciences LLC	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft.
21310–N	Bolloré Logistics Germany Gmbh.	172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To authorize the transportation in commerce of certain Division 2.2 liquefied or compressed gases in non-specification packages for use in cooling applications for spacecraft and/or satellites.
21311–N	Spaceflight, Inc	173.185(e)(3)	To authorize the transportation in commerce of prototype lithium batteries contained in equipment by motor vehicle.
21315–N	Umbra Lab, Inc	173.185(b)	To authorize the transportation of lithium ion battery modules contained in equipment (spacecraft).
21327–N	Bolloré Logistics Germany Gmbh.	173.301, 173.301, 173.302a(a)(1), 173.304a(a)(2).	To authorize the transportation of certain non-DOT specification containers containing certain Division 2.2 and 2.3 liquefied and compressed gases.
21329–N	Environmental Protection Agency.	173.185(f)(1), 173.185(f)(3)	To authorize the transportation in commerce of waste lithium ion batteries from a Superfund Site for disposal or recycling.
Special Permits Data—Denied			
21292–N	Showa Chemicals of America, Inc.	173.304a(a)	To authorize the transportation in commerce of non-DOT specification cylinders fabricated to a foreign cylinder specification.
Special Permits Data—Withdrawn			
21298–N	Linde Gas & Equipment Inc	173.301(f), 173.301(g)(1)(ii), 173.304a(c).	To authorize the transportation in commerce of UN1070, nitrous oxide, in cylinders interconnected by a manifold.
21312–N	Moxion Power Co	172.102	To authorize the transportation in commerce of lithium batteries installed in a cargo transport unit.
21340–N	Epic Chemistry LLC	172.203(a), 172.301(c), 177.834(h).	To authorize discharge of certain Class 3, Division 6.1, and Class 8, and Class 9 liquids from a DOT Specification drum without removing the drum from the vehicle on which it is transported.
21341–N	Epic Chemistry LLC	172.203(a), 172.302(c), 177.834(h).	To authorize the discharge of certain liquid hazardous materials from certain UN Intermediate Bulk Containers (IBCs) and DOT Specification 57 portable tanks without removing them from the vehicle on which they are transported.

[FR Doc. 2022–04944 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before March 24, 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 or at *http://regulations.gov.*

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 March 2, 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
12412–M	Circle Transport Inc	172.203(a), 172.302(c), 177.834(h).	To modify the special permit to authorize 550-gallon Intermediate Bulk Containers. (mode 1)
14163–M	Linde Gas & Equipment Inc	173.301(g)(1)(ii)	To modify the special permit to authorize DOT specification 3AL cylinders. (modes 1, 2, 3)
16485–M	Entegris, Inc.	173.302c(a), 173.302c(i)(5), 180.205(f), 180.205(g).	To modify the special permit by authorizing DOT–3AA cylinders containing adsorbed gases to be requalified by the helium proof pressure and leak test authorized by DOT–SP 13220. (modes 1, 3)
20910–M	Cellblock FCS, LLC	172.200, 172.300, 172.400, 172.500, 172.600, 172.700(a).	To modify the special permit to authorize a package marked with the UN3480 and UN3481 identification numbers when the package may not contain the identified hazardous material. (modes 1, 3)
21203–M	Daklapack US Inc	173.199(a)(1)	To modify the special permit to authorize the use a QR code in lieu of carrying a copy of the special permit aboard each motor vehicle and cargo-only aircraft and the manufacture of the packaging and to clarify end-user requirements. (modes 1, 4)

[FR Doc. 2022–04948 Filed 3–8–22; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before April 8, 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 March 2, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
21339–N	Department of Defense US Army Military Surface Deployment & Distribution Command.	173.27(f)(3), 173.202	To authorize the transportation in commerce of UN2030, hydrazine aqueous solution in alternative packaging. (modes 1, 2, 3, 4).
21342–N	Ultium Cells LLC	173.185(b)(3)(ii), 173.185(b)(6).	To authorize the transportation in commerce of multiple lithium ion cells packaged within a rigid Large UN packaging by highway and rail. (modes 1, 2).
21344–N	ZF Dongfang Automotive Safety Technology (Xi'an) Co., Ltd.	173.301(h), 173.302a(a)(1)	To authorize the manufacture, mark, sale, and use of non-DOT specification pressure vessels for use as components of safety systems and explosive articles. (modes 1, 2, 3, 4, 5).
21346–N	Porsche Motorsport	172.101(j), 173.220(d), 173.185(a)(1).	To authorize the transportation in commerce of prototype lithium batteries and vehicles containing prototype lithium batteries. (mode 4).

[FR Doc. 2022–04947 Filed 3–8–22; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2022–0016]

Non-Traditional and Emerging Transportation Technology (NETT) Council; Request for Comment

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The Office of the Secretary of Transportation (OST) invites public comment on projects, issues, or topics that DOT should consider through the Non-Traditional and Emerging Transportation Technology (NETT) Council. Public comments will inform the Department's future efforts with the NETT Council.

DATES: Comments are requested by April 8, 2022. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation,'' below, for more information about written comments.

ADDRESSES:

Written Comments: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable 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 should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *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 to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Please contact us at *NETTCouncil@dot.gov* or David Carter (*david.carter@dot.gov,* 202–366–4813) for questions. Office hours are from 8 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 25008 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58) authorizes the NETT Council to address coordination on emerging technology issues across all modes of transportation. The NETT Council shall (1) identify and resolve jurisdictional and regulatory gaps or inconsistencies associated with nontraditional and emerging transportation technologies, modes, or projects pending or brought before the Department of Transportation to reduce, to the maximum extent practicable, impediments to the prompt and safe deployment of new and innovative transportation technology, including with respect to safety oversight, environmental review, and funding and financing issues; (2) coordinate the response of the Department of Transportation to nontraditional and emerging transportation technology projects; (3) engage with stakeholders in nontraditional and emerging transportation technology projects; and (4) develop and establish Department of Transportation-wide processes, solutions, and best practices for identifying and managing nontraditional and emerging transportation technology projects.

DOT is focused on improving safety, economic strength and creating good-paying jobs with the choice of a union, equity, climate, and resilience. DOT is also modernizing a transportation system of the future through research and innovation—all while maintaining the highest standards in organizational excellence. DOT is seeking public comments to help inform the future work and direction of the NETT Council. The questions below are meant to guide commenters; however, commenters are invited to provide their views or general comments related to how the Council evaluates transportation innovation, and relevant innovations for it to focus on. If relevant, please provide technical information, regulatory citations, data, or other evidence to support your comments.

The NETT Council's Work

1. How can the NETT Council most effectively serve as an entry point for nontraditional and emerging innovation and technologies ready for integration into the transportation system?

2. What has worked well, and not well, about the current structure and activities of the NETT Council?

Considering a Range of Perspectives in the NETT Council's Analyses

3. How can the NETT Council best incorporate the perspective of and engage with other Federal agencies and a broad range of stakeholders (*e.g.,* academia, labor unions, state, local, and tribal governments, private sector) to fully understand potential issues and opportunities related to transportation innovation?

4. How can the NETT Council more effectively reflect inputs from a broad range of transportation stakeholders to assess the positive and negative consequences of transportation innovation?

5. Are there additional stakeholders the NETT Council's analysis should reflect?

6. Are there stakeholder groups that have been marginalized in transportation technology innovation that should be better represented in the NETT Council's analysis and work?

Priority Technologies and Innovations for the NETT Council To Review

7. Using DOT's authorities, what nontraditional and emerging innovation and technologies should NETT Council prioritize for analysis as most impactful, positive or negative, for the transportation system? What emerging innovations have the most significant potential impact on DOT's strategic goals of safety, economic strength & global competitiveness, including creating good-paying jobs, equity, climate and sustainability, transformation, and organizational excellence?

8. What emerging innovations face gaps in focus, support, and/or regulation under DOT's existing regulatory frameworks, and should be reviewed by the NETT Council?

9. What emerging transportation technologies should the NETT Council evaluate for their potential to contribute to ensuring American workers and

domestic sourcing and supply chains are strengthened rather than weakened through transportation innovation, including advancing activities under the President's Made in America Executive Order 14005, dated January 25, 2021, and the President's Executive Order 14017 on America's Supply Chains, dated February 24, 2021?

10. What other pressing issues, challenges, and opportunities for transportation innovation should be addressed through the NETT Council?

Public Participation

How do I prepare and submit comments?

Your comments must be written in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

Any submissions containing Confidential Information must be delivered to OST in the following manner:

- Submitted in a sealed envelope marked ''confidential treatment requested'';
- Document(s) or information that the submitter would like withheld should be marked ''PROPIN''; Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and
- Submitted with a statement explaining the submitter's grounds for objecting to disclosure of the information to the public.

OST will treat such marked submissions as confidential under the FOIA and will not include it in the public docket. OST also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. In the event that the submitter cannot provide a non-confidential version of its submission, OST requests that the submitter post a notice in the docket stating that it has provided OST with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Will the Agency consider late comments?

OST will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under WRITTEN COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Issued in Washington, DC, on March 2, 2022, under authority delegated at 49 CFR 1.25a.

Vincent Gerard White Jr.,

Senior Advisor for Innovation.

Michael Paris Shapiro,

Deputy Assistant Secretary for Economic Policy.

[FR Doc. 2022–04728 Filed 3–8–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(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 SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On March 4, 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.

Individuals

1. SAADE, Ali (a.k.a. SAADE, Ali Moussa; a.k.a. SAADI, Ali), Tamer Mallat, Beirut, Lebanon; DOB 18 May 1942; POB Conakry, Guinea; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport RL0420013 (Lebanon) expires 01 Mar 2015; alt. Passport 14205180170519 (Guinea) expires 29 May 2024; alt. Passport 18FV09784 (France) expires 06 Feb 2029 (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. TAHER, Ibrahim (a.k.a. TAHER, Fadlallah Brahim; a.k.a. TAHER, Ibrahim Amin Fadlallah; a.k.a. TAHER, Ibrahim Fadlallah), Guinea; DOB 10 Nov

1963; POB Jwaya, Lebanon; nationality Lebanon; alt. nationality United Kingdom; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 16311109613998 (Guinea) expires 27 Oct 2031; alt. Passport 790205295 (United Kingdom) expires 22 Aug 2018; alt. Passport 137828 (Lebanon) issued 20 Aug 2008 (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: March 4, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–04990 Filed 3–8–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee; Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC) will hold a public meeting via ''Zoom'' on Wednesday, March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Parman, Office of National Public Liaison, at (202) 317–6247, or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting via conference call of the ETAAC will be held on Wednesday, March 23, 2022, from 4:00 p.m. to 5:00 p.m. EDT. The purpose of the ETAAC is to provide continuing advice regarding the development and implementation of the IRS organizational strategy for electronic tax administration. ETAAC is an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud. It supports the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. Please call or email Sean Parman to confirm your attendance. Mr. Parman can be reached at 202–317–6247 or *PublicLiaison@irs.gov.* Should you wish the ETAAC to consider a written statement, please call 202–317–6247 or email: *PublicLiaison@irs.gov.*

Dated: March 3, 2022.

John A. Lipold,

Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.

[FR Doc. 2022–04992 Filed 3–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for Form 13768, Electronic Tax Administration Advisory Committee Membership Application

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 Form 13768, Electronic Tax Administration Advisory Committee Membership Application.

DATES: Written comments should be received on or before May 9, 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, or by email to *omb.unit@irs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Sara Covington, at (202) 317–4542, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Tax Administration Advisory Committee Membership.

OMB Number: 1545–2231.

Form Number: Form 13768.

Abstract: The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) authorized the creation of the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC has a primary duty of providing input to the Internal Revenue Service (IRS) on its strategic plan for electronic tax administration. Accordingly, ETAAC's responsibilities involve researching, analyzing and making recommendations on a wide range of electronic tax administration issues.

Current Actions: There were changes to the design of the form since last revision; however, these changes did not affect the burden estimates for this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Taxpayer Burden:

Estimated Number of Respondents: 500.

Estimated Time per Response: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: March 03, 2022.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2022–04940 Filed 3–8–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0629]

Agency Information Collection Activity Under OMB Review: Application for Extended Care Services

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0629.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0629'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Application for Extended Care Services, VA Form 10–10EC.

OMB Control Number: 2900–0629.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Title 38 U.S.C. Chapter 17 authorizes VA to provide hospital care, medical services, domiciliary care, and nursing home care to eligible Veterans. Title 38 U.S.C. 1705 requires VA to design, establish and operate a system of annual patient enrollment in accordance with a series of stipulated priorities. A consequence of this is that many groups of Veterans who are in a lower priority group (WWI Veterans, Veterans with disabilities rated as 0% service-connected seeking treatment for other than their service-connected conditions, Veterans exposed to a toxic substance, radiation, or environmental hazard and nonservice-connected Veterans) may request that they be allowed to be income tested in order to gain a higher priority. Title 38 U.S.C. 1722 establishes eligibility assessment procedures for cost-free VA medical care, based on income levels, which will determine whether nonservice-connected and 0% service-connected non-compensable Veterans are able to defray the necessary expenses of care for nonservice-connected conditions. Title 38 U.S.C. 1722A establishes the eligibility assessment procedures, based on income levels, for determining Veterans' eligibility for cost-free medications and Title 38 U.S.C. 1710B defines the procedures for establishing eligibility for cost-free Extended Care benefits. Title 38 U.S.C. 1729 authorizes VA to recover from Veterans' health insurance carriers the cost of care furnished for their nonservice-connected conditions.

VA Form 10–10EC, Application for Extended Care Services, is used to collect financial information necessary to determine a Veteran's copayment obligation for extended care services, also known as long term care (LTC).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: 86 FR 245 on December 27, 2021, pages 73413 and 73414.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 2,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–04973 Filed 3–8–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–XXXX]

Agency Information Collection Activity: Guaranteed or Insured Loan Reporting Requirements

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed new collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 9, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–XXXX'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–XXXX'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the

quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 CFR 36.4303.

Title: Guaranteed or Insured Loan Reporting Requirements.

OMB Control Number: 2900–XXXX.

Type of Review: New Collection.

Abstract: This information collection package seeks OMB approval of information collection requirements currently found in VA regulations, but that do not appear to have previously been approved by OMB. VA statute requires lenders to report a guaranteed or insured loan to VA in such detail as the Secretary may prescribe. 38 U.S.C. 3702(c). In cases where the loan is guaranteed, the Secretary shall provide the lender with a loan guaranty certificate or other evidence of the guaranty. Regulations codified at 38 CFR 36.4303 detail the requirements of lenders to report loans to VA in order to obtain evidence of the guaranty.

Affected Public: Individuals and households.

Estimated Annual Burden: 67,452 hours.

Estimated Average Burden per Respondent: 4.8 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 843,150.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–04941 Filed 3–8–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 46 March 9, 2022

Part II

Department of Agriculture

Rural Housing Service

Section 514 Off-Farm Labor Housing Loans and Section 516 Off-Farm Labor Housing Grants To Improve, Repair, or Make Modifications to Existing Off-Farm Labor Housing Properties for Fiscal Year 2022; Notice

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No.: RHS–22–MFH–0003]

Section 514 Off-Farm Labor Housing Loans and Section 516 Off-Farm Labor Housing Grants To Improve, Repair, or Make Modifications to Existing Off-Farm Labor Housing Properties for Fiscal Year 2022

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of Funds Availability (NOFA).

SUMMARY: The Rural Housing Service (RHS), a Rural Development agency of the United States Department of Agriculture, announces that it is accepting pre-applications for subsequent Section 514 Off-Farm Labor Housing (Off-FLH) loans and subsequent Section 516 Off-FLH grants to improve, repair, or make modifications to existing Off-Farm Labor Housing Properties for fiscal year 2022. Funds made available under this notice are $5,500,000 for Section 514 loans and $17,000,000 for Section 516 grants. This Notice describes the method used to distribute funds, the pre-application and final application process, and submission requirements.

DATES: Eligible pre-applications submitted to the Production and Preservation Division, Processing and Report Review Branch, for this Notice will be accepted until April 25, 2022, 12 p.m., Eastern Standard Time. Pre-applications that are deemed eligible but are not selected for further processing, will be withdrawn from processing. RHS will not consider any application that is received after the established deadlines unless the date and time are extended by another Notice published in the **Federal Register**. The RHS may at any time supplement, extend, amend, modify, or supersede this Notice by publishing another Notice in the **Federal Register**. Additional information about this funding opportunity can be found on the *Grants.gov* website at *https://www.grants.gov.*

The application deadlines are as follows:

1. Pre-applications must be submitted by April 25, 2022, 12 p.m., Eastern Standard Time.

2. RHS notification to applicants by June 27, 2022.

3. Final applications must be submitted by August 29, 2022, 12 p.m., Eastern Standard Time.

4. Awards communicated to applicants by October 31, 2022.

5. Awards posted to the RHS website by November 30, 2022.

ADDRESSES: Applications to this Notice must be submitted electronically to the Production and Preservation Division, Processing and Report Review Branch.

At least two business days prior to the application deadline, the applicant must email the RHS a request to create a shared folder in CloudVault. The email must be sent to the following address: *Off-FLHapplication@usda.gov.* The email must contain the following information:

1. Subject line: ''Off-FLH Repair Application Submission.''

2. Body of email: Borrower Name, Project Name, Borrower Contact Information, Project State.

3. Request language: ''Please create a shared CloudVault folder so that we may submit our application documents.''

Once the email request to create a shared CloudVault folder has been received, a shared folder will be created within 2 business days. When the shared CloudVault folder is created by the RHS, the system will automatically send an email to the applicant's submission email with a link to the shared folder. All required application documents in accordance with this Notice must be loaded into the shared CloudVault folder. When the submission deadline is reached the applicant's access to the shared CloudVault folder will be removed. Any document uploaded to the shared CloudVault folder after the application deadline will not be reviewed or considered.

For further instructions, please refer to Section C. Pre-Application and Submission Information of this Notice.

FOR FURTHER INFORMATION CONTACT: Jonathan Bell, Director, Processing and Report Review Branches, Production and Preservation Division, Multifamily Housing Programs, Rural Development, United States Department of Agriculture, via email: *MFHprocessing1@usda.gov* or telephone: (254) 742–9764.

For information regarding the Addendum: Capital Needs Assessment Process located at the end of this notice, contact: Jonathan Bell, Director, Processing and Report Review Branches, Production and Preservation Division, Multifamily Housing Programs, Rural Development, United States Department of Agriculture, via email: *MFHprocessing1@usda.gov* or telephone: (254) 742–9764.

SUPPLEMENTARY INFORMATION:

Authority

This solicitation is authorized pursuant to the Title V of the Housing Act of 1949 (Pub. L. 81–171), as amended; 7 CFR 3560, subpart L; 42 U.S.C. 1484; 42 U.S.C. 1486(h); and 42 U.S.C. 1480.

Rural Development: Key Priorities

The RHS encourages applicants to consider projects that will advance the following key priorities:

- Assisting Rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

For further information, visit *https://www.rd.usda.gov/priority-points.*

Background

USDA's Rural Development Agencies, comprising the Rural Business-Cooperative Service (RB–CS), Rural Housing Service (RHS), and the Rural Utilities Service (RUS), are leading the way in helping rural America improve the quality of life and increase the economic opportunities for rural people. RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. The Agency also offers loans, grants, and loan guarantees for single- and multi-family housing, child-care centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. The Agency also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

Sections 514 and 516 of the Housing Act of 1949 allows the RHS to provide competitive financing and grants, respectively, for affordable multi-family rental housing. The program objective is to better administer repair funds in a fair, equitable, and transparent manner. Funds will be used to improve, repair, or make modifications to existing Off-FLH properties currently financed by the RHS that serve domestic farm laborers, retired domestic farm laborers, or disabled domestic farm laborers.

To focus investments in areas where the need for increased prosperity is greatest, the RHS will set aside 10 percent of the available funds for

applications that will serve persistent poverty counties. Persistent poverty counties are areas where at least 20 percent of the population is living in poverty over the last 30 years (measured by the 1980, 1990, 2000 and 2010 decennial censuses and 2007–2011 American Community Survey 5-year estimates) according to the American Community Survey census tract data. Information on which counties are considered persistent poverty counties can be found through the United States Department of Agriculture's (USDA) Economic Research Service (ERS) (*https://ers.usda.gov/*). ERS is the main source of economic information and research for USDA and a principal agency of the U.S. Federal Statistical System located in Washington, DC. Set-aside funds will be awarded in the order of receipt of pre-applications. Once the set-aside funds are exhausted, any further set-aside applications will be evaluated and ranked with the other applications submitted in response to this Notice. If the RHS does not receive enough eligible applications to fully utilize the 10 percent set aside in the service of these areas, the RHS will award any unused set aside funds to other eligible applicants.

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Section 514 Off-Farm Labor Housing Loans and Subsequent Section 516 Off-Farm Labor Housing Grants to Improve, Repair, or Make Modifications to existing Off-Farm Labor Housing Properties for Fiscal Year 2022.

Funding Opportunity Number: USDA–RD–HCFP–FLH–2022.

Available Funds: Section 514 Loans: $5,500,000; Section 516 Grants: $17,000,000.

Maximum Award: Award may not exceed $15,000 per unit (total loan and grant). There is no minimum award.

Announcement Type: Request for applications from qualified applicants for Fiscal Year 2022.

Assistance Listing Numbers (formerly CFDA): 10.405.

Please Note: Expenses incurred in developing pre-applications and final applications will be at the applicant's sole risk.

A. Federal Award Description

(1) Pre-applications will only be accepted through the date and time listed in this Notice. The maximum award per selected project may not exceed $15,000 per unit (total loan and grant). There is no minimum award requirement. Substantial rehabilitation or proposals for limited improvements, repairs, or modifications such as accessibility compliance and health and safety issues will be considered under this Notice.

(2) A State will not receive more than 50 percent of the Off-FLH funding unless there are remaining Section 514 and Section 516 funds after all eligible applications nationwide have been funded. In this case, funds will be awarded to the next highest-ranking eligible applications among all of the remaining unfunded applications. The allocation of these funds may result in a State or States exceeding the 50 percent limitation.

(3) Section 516 Off-FLH grants may not exceed 90 percent of the total development cost (TDC) of the proposed transaction. TDC is defined in 7 CFR 3560.11. Section 514 Off-FLH loans may not exceed the limits set forth in 7 CFR 3560.562(b).

(4) Applications that propose the use of Low-Income Housing Tax Credits (LIHTC), will not be considered and are not eligible under this Notice.

(5) Any proposed leveraged funds must be in the form of a grant or similar funding source with no debt service. No other source of leveraged funds is acceptable. Pre-applications that propose the use of leveraged funds must include firm commitment letters within their final application, if available. If the applicant is unable to secure a third-party firm commitment letter within 180 calendar days from the issuance of the award letter under this NOFA, the application will be deemed incomplete, and the award letter will be considered null and void.

(6) A firm commitment letter is defined as a grantor's unqualified pledge to the applicant that they meet their guidelines, and they are willing to offer the applicant a grant under specified terms. The letter validates that the applicant's grant has been fully approved and that the grantor is prepared to close the transaction. Preliminary commitment letters, term sheets, or any other letter from the grantor that does not meet the definition above will not be considered a firm commitment letter and will not meet the requirements specified in this Notice. Rental Assistance (RA) and Operating Assistance (OA) are not available for this Notice.

(7) To maximize the use of the limited supply of FLH funds, the RHS may contact eligible applicants selected for an award in point score order starting with the highest score, with proposals to modify the transaction's proportions of loan and grant funds. In addition, if funds remain after the highest scoring eligible applications are selected for awards, we may contact those eligible applicants selected for the awards, in point score order starting with the highest score, to ascertain whether those respondents will accept the remaining funds.

(8) To enhance customer service and the transparency of this program, the RHS will publish a list of awardees including the project name and location and the loan and/or grant amounts of their respective awards in accordance with the date listed in this Notice. This information can be found at: *https://www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants.* The RHS reserves the right to post all information submitted as part of the pre-application and final application package, which is not protected under the Privacy Act, on a public website with free and open access to any member of the public.

B. Eligibility Information

(1) Housing Eligibility

(a) Housing that is improved, repaired, or modified with subsequent Off-FLH loan and/or grant funds must meet the standards contained in 7 CFR part 1924, subparts A and C. Off-FLH must be managed in accordance with 7 CFR part 3560.

(b) Off-FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless of which farm they work at.

(c) Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)) defines domestic farm laborers to include any person regardless of the person's source of employment, who receives a substantial portion of his/her income from the primary production of agricultural or aqua cultural commodities in the unprocessed or processed stage, and also includes the person's family.

(2) Tenant Eligibility

(a) Tenant eligibility is limited to persons who meet the definition of a ''domestic farm laborer,'' or a ''disabled domestic farm laborer,'' or a ''retired domestic farm laborer'' as defined in Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)).

Section 514(f)(3)(A) of the Housing Act of 1949 (42 U.S.C. 1484(f)(3)(A)) has been amended to extend FLH tenant eligibility to agricultural workers legally admitted to the United States and authorized to work in agriculture. It is important to note, that persons admitted legally for agricultural work remain ineligible for RA as set forth in 7 CFR

3560.254(c). In addition, under no circumstance may any currently eligible FLH tenants be displaced from their homes as a result of this statutory change.

(b) Owners are responsible for verifying tenant income eligibility. Only very low or low-income households are eligible for operating or rental assistance rents. Households with incomes above the low-income limits, moderate income households, must pay the full rent.

(c) Migrant or migrant agricultural laborer is a person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.

(d) Seasonal housing is housing that is operated on a seasonal basis, typically for migrants or migrant agricultural laborers as opposed to year-round. Off-FLH subsequent loan and grant funds may be used to improve, repair, or modify existing properties currently financed by the RHS for seasonal or temporary residential use. A temporary residence is a dwelling which is used for occupancy, usually for a short period of time, but is not the legal residence for the occupant.

(e) The requirements established in § 3560.60 apply to all applications for Off-FLH loans and grants except that seasonal Off-FLH that will be occupied for eight months or less per year by migrant farmworkers while they are away from their residence, may be improved in accordance with Exhibit I of 7 CFR part 1924, subpart A.

(f) For Off-FLH operating on a seasonal basis, the management plan must establish specific opening and closing dates. During the off-season, Off-FLH may be used as defined in 7 CFR 3560, subpart A, under short-term lease provisions. Where rents are charged on a per-unit basis and family income qualifies the household for rental assistance, rental assistance may be used.

(g) Off-FLH is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under 7 CFR 3560, subpart E, except where seasonal housing will be occupied for less than a 3-month period. In such instances the best available and practical income verification methods may be used with prior approval of the RHS.

(h) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions as published by the RHS for their particular region of the country. For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions, as published by the RHS.

(3) Applicant Eligibility

All eligible applicants must meet the following requirements:

(a) To be eligible to receive a subsequent Section 514 loan for Off-FLH, the applicant must meet the requirements of 7 CFR 3560.555(a) and be a broad-based nonprofit organization, a nonprofit organization of farmworkers, a federally recognized Indian tribe, a community organization, or an agency or political subdivision of State or local government, and must meet the requirements of § 3560.55, excluding § 3560.55(a)(6). A broad-based nonprofit organization is a nonprofit organization that has a membership that reflects a variety of interests in the area where the housing will be located; or a limited partnership with a non-profit general partner which meets the requirements of § 3560.55(d).

(b) To be eligible to receive a subsequent Section 516 grant for Off-FLH, the applicant must meet the requirements of 7 CFR 3560.555(b) and be a broad-based nonprofit organization, a nonprofit organization of farmworkers, a federally recognized Indian tribe, a community organization, or an agency or political subdivision of State or local government, and must meet the requirements of § 3560.55, excluding § 3560.55(a)(6). A broad-based nonprofit organization is a nonprofit organization that has a membership that reflects a variety of interests in the area where the housing will be located and be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. The applicant's contribution must be available at the time of the grant closing. An Off-FLH loan financed by the RHS may be used to meet this requirement, however, an RHS grant cannot be used to meet this requirement. Limited partnerships with a non-profit general partner are eligible for Section 514 loans, however, they are not eligible for Section 516 grants.

(c) The applicant must be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents. (Note: not applicable for State or local public agencies or Indian tribes.)

(d) Possess the legal and financial capacity to carry out the obligations required for the subsequent loan and/or grant.

(e) Broad-based non-profit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

(f) Be able to maintain, manage, and operate the Off-FLH for its intended purpose and in accordance with all RHS requirements as demonstrated with its compliance with RHS servicing requirements. Non-compliance with RHS servicing requirements with other projects owned and/or managed by natural person(s) managing/controlling (whether directly or indirectly through other entities) the borrowing entity, will render the applicant ineligible to participate in this Notice nationwide until the non-compliance event(s) is/are remedied or are in compliance with an RHS approved workout plan.

(g) With the exception of applicants who are a non-profit organization, housing cooperative or public body, be able to provide the borrower contribution from their own resources (this contribution must be in the form of cash).

(h) Not be suspended, debarred, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under 2 CFR parts 180 and 417.

(i) Not be delinquent on Federal debt or a Federal judgment debtor, with the exception of those debtors described in 7 CFR 3560.55 (b).

(j) Be in compliance with the requirements of the Improper Payments Elimination and Recovery Improvement Act (IPERIA) as applied by RHS.

(k) Additional requirements for applicants: If an applicant, the managing general partner, managing member, or key principal in the organization decision-making and operational authority that have control of the applicant and any sub-applicant entities involved including the actual natural person(s) of any sub-entity (*i.e.,* other organizations, partnerships, etc.) exercising management and/or financial control of an applicant borrower, as well as any affiliated entity having a 10 percent or more ownership interest, having a prior or existing RHS debt, the following additional requirements must be met:

(*i*) The applicant must be in compliance with any existing loan or grant agreements and with all legal and regulatory requirements or be compliant with an RHS approved workout plan.

The RHS may require that applicants with monetary or non-monetary deficiencies be in compliance with an RHS approved workout plan for a minimum of six (6) consecutive months before becoming eligible for further assistance, as determined by the RHS.

(*ii*) The applicant must be in compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other applicable civil rights laws. Under this Notice, the project will also be considered eligible to apply if there is a current and accepted Self-Evaluation Transition Plan for the project.

(l) Additional requirements for non-profit organizations. In addition to the eligibility requirements of the paragraphs above, non-profit organizations must meet the following criteria:

(*i*) The applicant must have received a tax-exempt ruling from the IRS designating the applicant as a 501(c)(3) or 501(c)(4) organization.

(*ii*) The applicant must have in its charter the provision of affordable housing.

(*iii*) No part of the applicant's earnings may benefit any of its members, founders, or contributors.

(*iv*) The applicant must be legally organized under State and local law.

(2) Additional requirements for limited partnerships. In addition to the applicant eligibility requirements of the paragraphs above, limited partnership loan applicants must meet the following criteria:

(*i*) The general partners must be able to meet the borrower contribution requirements if the partnership is not able to do so at the time of loan request.

(*ii*) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

(*iii*) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of the RHS.

(m*)* This Notice requires selected applicants to make the required equity contribution as outlined in 3560.63(c) for any new Section 514 loan. Applicants may be eligible to receive additional Return to Owner (RTO) for this required contribution, if applicable.

(n) Eligibility also includes the continued ability of the borrower/applicant to provide acceptable management and will include an evaluation of any current outstanding deficiencies. Any outstanding violations or extended open operational findings associated with the applicant/borrower or any affiliated entity having an identity of interest (IOI) with the project ownership and which are recorded in the RHS's automated Multi-Family Information System (MFIS), will preclude further processing of any application unless there is a current and approved RHS workout plan and the applicant is in compliance with the provisions of the workout plan. The RHS may require that applicants with deficiencies be in compliance with an RHS approved workout plan for a minimum of six (6) consecutive months, as determined by the RHS.

(4) Project Eligibility

This Notice solicits pre-applications from the current borrowers/owners of existing Off-FLH projects currently participating in the RHS's Section 514/516 Off-FLH portfolio for the purpose of improving, repairing, modifying, revitalizing, and preserving the facility to ensure that it will continue to provide decent, safe, and sanitary housing. Any Off-FLH project that is not already participating in the RHS's Section 514/516 Off-FLH portfolio as evidenced by currently having an outstanding Section 514 Off-FLH loan is not eligible under this Notice.

(a) On-Farm Labor Housing projects are not eligible under this Notice.

(b) This Notice is for stay in owner transactions only where the current owner, with an outstanding Section 514 Off-FLH loan, may apply for subsequent loan and/or grant funds to improve, repair, or make modifications to their Off-FLH property. Proposals that are for a transfer of ownership, to sell the property, to complete a recapitalization, or for an IOI or third-party acquisition transaction will not be considered and are not eligible under this Notice.

(c) Applications that propose the use of LIHTC, will not be considered and are not eligible under this Notice as stated above.

(d) Any Off-FLH property that currently has an RHS approved Diminished Needs Waiver (DNW) or is in the process of applying for a DNW, is not eligible under this Notice. All of the tenants residing in the project must be eligible farm labor tenants as defined in this Notice. A DNW allows non-farm labor tenants to reside in farm labor housing if the diminished need for such housing has been determined and accepted by RHS.

(e) The average physical vacancy rate for the twelve (12) months preceding this Notice's pre-application submission due date of February 1, 2022, can be no more than ten (10) percent for projects consisting of sixteen (16) or more revenue units and no more than fifteen (15) percent for projects with less than sixteen (16) revenue units unless the project is seasonal Off-FLH or unless the applicant has an RHS approved workout plan and is in compliance with the provisions of the workout plan and provides sufficient market documentation or a market study that clearly demonstrates to the RHS that sufficient market demand exists. If the project is seasonal Off-FLH, the applicant must provide detailed documentation for the twenty-four (24) months preceding this Notice's pre-application submission due date that verifies the project's operations including information regarding the open and close date, lease-up, vacancy, rent rolls, operating budgets, and any other information the applicant can provide to document the need for the seasonal Off-FLH project. All of the tenants in the project must be eligible farm labor tenants as defined in this Notice.

(f) A positive cash flow for the previous full three (3) years of operations is required unless an exception applies for projects with an RHS approved workout plan where the applicant is in compliance with the provisions of the workout plan. The RHS may require that applicants with monetary or non-monetary deficiencies be in compliance with the RHS approved workout plan for a minimum of six (6) consecutive months before becoming eligible for a loan and/or grant under this Notice. Additionally, an exception may apply to projects that have a negative cash flow in operations if surplus cash exists in either the general operating account as defined in 7 CFR 3560.306(d)(1) or the reserve account. Surplus cash exists when the balance is greater than the required deposits minus authorized withdrawals. The applicant must provide the project's annual financial report(s) to document the project complies with this exception for each year the project has a negative cash flow, if applicable. Seasonal Off-FLH properties that receive OA may also be exempt from this requirement at the sole discretion of the RHS, if applicable.

(g) An RHS approved As-Is Capital Needs Assessment (CNA) and an RHS financial evaluation and analysis must be conducted to ensure that utilization of the subsequent loan and/or grant funds are financially feasible and necessary to improve, repair, modify, and preserve the project as affordable housing.

Specifically, a CNA provides a repair schedule for the property in its present condition, indicating repairs and replacements necessary for a property to function properly and efficiently over a

span of 20 years. At the end of this funding Notice, a CNA Addendum is provided with detailed instructions to assist the applicant in completing CNA reports, expected useful life tables, and forms. Additionally, there are six attachments which accompany the CNA addendum identified as followed: A CNA is comprised of nine main sections:

- Definitions;
- Contract Addendum;
- Requirements and Statement of Work (SOW) for a CNA;
- The CNA Review Process;
- Guidance for the Multi-Family Housing (MFH) CNA Recipient Regarding Contracting for a CNA;
- Revising an Accepted CNA During Underwriting;
- Updating a CNA;
- Incorporating a Property's Rehabilitation into a CNA; and
- Repair and Replacement Schedule.

Additionally, there are seven attachments which accompany the CNA addendum identified as follows:

- Attachment A, ADDENDUM TO THE CAPITAL NEEDS ASSESSMENT CONTRACT.
- (B) Attachment B, CAPITAL NEEDS ASSESSMENT STATEMENT OF WORK.
- (C) Attachment C, FANNIE MAE PHYSICAL NEEDS ASSESSMENT GUIDANCE TO THE PROPERTY EVALUATOR.
- (D) Attachment D, CNA e-Tool Estimated Useful Life Table.
- (E) Attachment E, CAPITAL NEEDS ASSESSMENT REPORT.
- (F) Attachment F, SAMPLE CAPITAL NEEDS ASSESSMENT REVIEW REPORT.
- (G) Attachment G, CAPITAL NEEDS ASSESSMENT GUIDANCE TO THE REVIEWER.

The CNA may be submitted with the final application. The Agency suggests that this information should be made available to RD MFH Off-Farm Labor Housing (FLH) property owners, applicants and CNA Providers who are or are planning to submit transactions for the Off-FLH program.

(h) Initial eligibility for any processing will be determined as of the pre-application submission due date of February 1, 2022. The RHS reserves the right to discontinue the processing of any application due to material changes in the applicant's status occurring any time after the initial eligibility determination.

(5) Priority of Funding

(a) Subsequent Section 514 loan and subsequent Section 516 grant funds will be awarded under this Notice in accordance with the following priorities:

- Health and Safety deficiencies.
- Deferred maintenance and Fair Housing compliance.
- Repairs that are needed to improve the sustained rental marketability of the property.

(b) Proposals to build community rooms, playgrounds, or laundry rooms may be considered and are eligible under this Notice. Furthermore, proposals to develop or construct additional units within the existing building envelope to comply with accessibility requirements will be considered and are eligible under this Notice. Funds may be used to repair or renovate existing project items identified in the CNA and to satisfy accessibility transition plans and fair housing requirements. Additional items may be added to the scope of work, if practical and feasible, at the sole discretion of the RHS, which could include accessibility, energy efficiency or energy generation items.

(c) Subsequent Section 514 Off-FLH loan funds may be used to establish a tenant protection account, if applicable and if required by the RHS, for existing unsubsidized tenants residing at the property on the day the transaction closes, to the extent necessary to reduce the rental payment to the pre-transaction rent, or thirty (30) percent of adjusted income, if higher. If applicable and if required by the RHS, the applicant will only be required to subsidize the difference in rents that exists at the time of the transaction closing for any unsubsidized tenant that is negatively impacted by the post-transaction rents. If applicable and if required by the RHS:

- This analysis and the required tenant protection amount will be evaluated and calculated by the RHS.
- all tenant protection costs must be included in the Sources and Uses analysis for the full amount needed to fund the initial two-year minimum period following the transaction closing date.
- the applicant must agree to protect currently eligible tenants affected by the rent increase as long as the tenant resides in the project. The obligation with respect to each unsubsidized tenant in place at the time of the transaction closing will end when the tenant receives rental assistance, receives a housing voucher, voluntarily leaves the property, is evicted for proper cause, or has income increased to pay the post-transaction basic rent without being rent over-burdened. The tenant protection account will be applicable and required at the sole discretion of the RHS.

(d) Grant Limit—the amount of any Off-FLH grant must not exceed 90 percent of the TDC as provided in 7 CFR 3560.562(c)(1).

(e) Other Requirements—the following requirements apply to subsequent loans and grants made in response to this Notice:

(i) 7 CFR part 1901, subpart E, regarding equal opportunity requirements.

(ii) For grants only, 2 CFR parts 200 and 400, which establishes the uniform administrative and audit requirements for grants and cooperative agreements to State and local Governments and to non-profit organizations.

(iii) 7 CFR part 1901, subpart F, regarding historical and archaeological properties.

(iv) 7 CFR 1970.11, Timing of the environmental review process. Please note, the environmental information must be submitted by the applicant to the RHS. The RHS must review and determine that the environmental information is acceptable before the obligation of funds.

(v) 7 CFR part 3560, subpart L, regarding the loan and grant authorities of the Off-FLH program.

(vi) 7 CFR part 1924, subpart A, regarding planning and performing construction and other development.

(vii) 7 CFR part 1924, subpart C, regarding the planning and performing of site development work.

(viii) For construction financed with a Section 516 grant, the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)–5) and implementing regulations published at 29 CFR parts 1, 3, and 5.

(ix) Current (not older than six months from the date of issuance) combination comprehensive credit reports for the applicant, entity and principals must be submitted and considered during the Agency's review for eligibility determination. In the past, the Agency has required the applicant to submit the credit report fee. In lieu of the applicant submitting the fee, the Agency will require the applicant to provide the credit report. It is the Agency's expectation that this change will create an efficiency in the application process that did not exist, which should assist with streamlining the application process for the applicant. Only Credit reports provided by accredited major credit bureaus will be accepted.

(x) Borrowers and grantees must take reasonable steps to ensure that tenants receive the language assistance necessary to afford them meaningful access to USDA programs and activities,

free of charge. Failure to provide this assistance to tenants who can effectively participate in or benefit from Federally assisted programs or activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and Title VI regulations against national origin discrimination.

(xi) In accordance with 7 CFR 3560.60, the housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(xii) All other requirements contained in 7 CFR part 3560, regarding the Sections 514/516 Off-FLH programs.

(xiii) System for Awards Management. All program applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Federal award recipients must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the RHS. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(6) Dun and Bradstreet Data Universal Numbering System (DUNS) for Award Management (SAM)

A Dun and Bradstreet Data Universal Numbering System (DUNS) number must be obtained and registered in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b). An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid DUNS number or unique entity identifier (UEI) in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. As required by the Office of Management and Budget (OMB), all applications must provide a DUNS number when applying for Federal assistance, on or after November 12, 2020. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *https://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *https://www.grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220. The applicant must provide documentation that they are registered in SAM and their DUNS or UEI number. If the applicant does not provide documentation that they are registered in SAM and their DUNS or UEI number, the application will not be considered for funding. The following forms for acceptance of a federal award are now collected through your registration or annual recertification in *SAM.gov* in the Financial Assistance General Certifications and Representations section:

- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants).''
- Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.''
- Form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants.''

C. Pre-Application and Submission Information

(1) Pre-Application Submission

The application process will be in two phases: The initial pre-application and the submission of a final application. Only those pre-applications that are selected for further processing will be invited to submit a final application. In the event that a pre-application is selected for further processing and the applicant declines, the next highest ranked pre-application will be selected for further processing. All pre-applications for Section 514 and 516 funds must meet the requirements of this Notice. Incomplete pre-applications will be rejected and returned to the applicant. No pre-application will be accepted after the deadline unless the date and time are extended by another Notice published in the **Federal Register**.

(a) Pre-applications must be submitted electronically. The process for submitting an electronic application to the RHS is as follows:

(i) At least two business days prior to the application deadline, the applicant must email the RHS a request to create a shared folder in CloudVault. The email must be sent to the following address: *Off-FLHapplication@usda.gov.* The email must contain the following information:

a. Subject line: ''Off-FLH Repair Application Submission.''

b. Body of email: Borrower Name, Project Name, Borrower Contact Information, Project State.

c. Request language: ''Please create a shared CloudVault folder so that we may submit our application documents.''

(ii) Once the email request to create a shared CloudVault folder has been received, a shared folder will be created within 2 business days. When the shared CloudVault folder is created by the RHS, the system will automatically send an email to the applicant's submission email with a link to the shared folder. All required application documents in accordance with this Notice must be loaded into the shared CloudVault folder. When the submission deadline is reached the applicant's access to the shared CloudVault folder will be removed. Any document uploaded to the shared CloudVault folder after the application deadline will not be reviewed or considered.

(iii) The applicant should upload a Table of Contents of all of the documents that have been uploaded to the shared CloudVault folder. Last-minute requests and submissions may not allow adequate time for the submission process to take place prior to the deadline. **Note:** *Applicants are reminded that all submissions must be received by the deadline and the application will be rejected if it is not received by the deadline date and time, regardless of when the application was submitted.*

(b) The RHS plans to host a workshop to discuss this Notice, the application process and the borrower's responsibilities, among other topics. Further information regarding the date and time of this workshop as well as information on how to participate will be issued at a later date via a public notice.

(c) If a pre-application is accepted for further processing, the applicant must submit a final application, acceptable to the RHS, by June 30, 2022, 12 p.m., Eastern Daylight Savings Time. If the pre-application is not accepted for further processing due to being incomplete or ineligible, the applicant will be notified of appeal rights under 7 CFR part 11. Pre-applications that are deemed eligible but are not selected for further processing will be withdrawn from processing and will be encouraged to apply to future Notices, if applicable. This action is not appealable.

2. Pre-Application Requirements

The pre-application must contain the following:

(a) An executed and dated Executive Summary on the applicant's letterhead that must include at least the following:

(i) Brief description of the project and its history. Include the borrower's name, project name, project location, number of units, number of Rental Assistance (RA) or Operating Assistance (OA) units, unit mix, etc. Be sure to address if the project is year-round or seasonal. Also provide the year the property was built and placed in service, the original sources of funding, and the original amounts of funding it received. Include a description of any significant improvements, repairs, or modifications that have been made since the property was placed in service, which would comprise substantial rehabilitations and significant repairs that were needed due to natural disasters, floods, fires, etc. Provide any other information that you may want to disclose regarding the project and its history.

(ii) Brief description of the proposed transaction. Provide a narrative of the loan and/or grant funds that the applicant is seeking from the RHS or any other third-party grant source and a description of what the funds will be utilized for. Describe the scope of work and explain how the transaction will come together overall including information on how the project will absorb any additional debt service, if applicable.

(iii) Description of the current ownership structure with an organizational chart.

(iv) Narrative verifying the applicant's ability to meet the eligibility requirements stated earlier in this Notice.

(v) A statement of the applicant's experience in operating labor housing or other rental housing.

(vi) Description of the applicant's legal and financial capability to carry out the obligation of the subsequent loan and/or grant.

(vii) Current management. A brief description of how the property is currently managed. As stated earlier in this Notice, the housing must be managed in accordance with the management regulations, 7 CFR part 3560.

(viii) Any financial commitments, financial concessions, or other economic benefits proposed to be provided by the RHS.

(ix) Third-party grant funding, if applicable. For each third-party grant funding source, discuss briefly the grant provider, grant amount, including terms, commitment status, timing issues, any restrictions that will be applicable to the project, and whether any accommodation from the RHS is proposed, such as a subordination in lien position. The desired lien position of any third-party grant funding source must be clearly disclosed as well as any proposal for the RHS to subordinate its lien position.

(x) Any proposed compensation to parties having an identity of interest with either the consultant or technical assistance provider, etc.

(xi) Any proposed construction financing, for example, a construction or bridge loan or the use of multiple advances.

(xii) Type and method of construction such as owner builder, negotiated bid, or contractor method.

(xiii) If an FLH grant is desired, a statement concerning the need for an FLH grant. The statement must include estimates of the rents required with a grant and rents required without a grant. Documentation to demonstrate how the rent figures were computed must be provided. Documentation must be in the form of a completed Form RD 3560–7, ''Multiple Family Housing Project Budget/Utility Allowance,'' completed as if a grant were received and another form completed as if a grant would not be received. The RHS will review each budget to determine that the income and expenses are reasonable and customary for the area. The RHS will then verify that the proposed rental rates provided on the budget that considers rents without a grant, are at or above market rate rents or at a level that would overburden the residents.

(xiv) Statement by the applicant that they will pay any cost overruns.

(xv) Estimated development timeline to include estimated start and end date as well as any other important milestones.

(xvi) Description of any required state or local approvals, if applicable.

(xvii) Description of the required and intended applicant contribution, if applicable.

(xviii) Any other pertinent information that the applicant feels should be disclosed as part of this proposal, if applicable.

(b) Form RD 3560–1, ''Application for Partial Release, Subordination, or Consent,'' can be obtained at: *https://formsadmin.sc.egov.usda.gov//efcommon/eFileServices/eFormsAdmin/RD3560-0001.pdf.*

(c) Standard Form 424, ''Application for Federal Assistance,'' can be obtained at: *https://www.grants.gov/.*

(d) Current (within 6 months of this Notice's pre-application submission due date) financial statements for each entity within the ownership structure with the following paragraph certified by the applicant's designated and legally authorized signer:

''*I/we certify the above is a true and accurate reflection of our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.*''

(e) Evidence that the applicant is unable to obtain credit from other sources. At least two letters from two separate credit institutions which normally provide real estate and repair loans in the area must be obtained and these letters must indicate the rates and terms upon which a loan might be provided. The RHS will review each letter to verify that the applicant is only able to obtain market rate financing, which would include a market rate interest rate and term of less than 30 (thirty) years.

(f) Letter from the IRS indicating the applicant's tax identification number.

(g) Documentation verifying the applicant's DUNS number, if applicable.

(h) Current and fully executed limited partnership agreement and certificates of limited partners, if applicable. (Agency requirements should be contained in one section of the agreement and their location identified by the applicant in a cover sheet.)

(i) If a nonprofit organization:

i. Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization.

ii. Purpose statement, including the provision of low-income housing.

iii. Evidence of organization under state and local law and a copy of the applicant's charter, Articles of Incorporation, and By-laws.

iv. List of Board of Directors including their names, occupations, phone numbers, and addresses.

v. If a member or subsidiary of another organization, the organization's name, address, and nature of business.

(j) Document the need for the project. As provided earlier in this Notice, the applicant must provide documentation that the average physical vacancy rate for the twelve (12) months preceding this Notice's pre-application submission due date has been no more than ten (10) percent for projects consisting of sixteen (16) or more revenue units and no more than fifteen (15) percent for projects with less than sixteen (16) revenue units unless the project is seasonal Off-FLH or unless the applicant has an RHS approved workout plan and is in compliance with the provisions of the workout plan and provides sufficient market documentation or a market study that clearly demonstrates to the RHS that sufficient market demand exists. If the project is seasonal Off-FLH, the applicant must provide detailed documentation for the twenty-four (24) months preceding this Notice's pre-application submission due date that verifies the project's operations including information regarding the open and close date, lease-up, vacancy, rent rolls, operating budgets, and any other information the applicant can provide to document the need for the seasonal Off-FLH project. All of the tenants in the project must be eligible farm labor tenants as defined in this Notice.

(k) If the project does not meet the vacancy requirements above a description of the cause of the vacancy and the plan to increase the occupancy must be submitted. The requested loan or grant funds must be needed in order to stabilize occupancy. In addition, a market study must be submitted to document the need for the project and must meet the following requirements. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn to the project. Documentation must be provided to justify the need within the primary market area for the housing of domestic farm laborers. The documentation must also consider disabled and retired farm workers and adjusted medium incomes of very-low, low, and moderate. The market study must include the following information:

- A complete description of the proposed site and a map showing the site, location of services, and their distances from the site.
- Names and qualifications of members of the community interviewed during the site visit and a discussion of their comments.
- Major employers in the area and year established.
- Employment opportunities and rates for the area for the past 5 years.
- Services available in the area, including shopping, schools, and medical facilities as well as community services such as recreational, transportation, and day care that are available.
- Population by year plus the annual increase or decrease for the past 5 years.
- Population characteristics by age.
- Number of households by year and number of persons per household for the past 5 years.
- Historical breakdown of households by owners and renters.
- Households by income groups.
- A survey of existing or proposed rental housing, including complex name, location, number of units, bedroom mix, family or elderly type, year built, rent charges, vacancies, waiting lists, amenities, and the availability of RA or other subsidies.
- Available mobile homes, if part of housing stock.
- The existing vacancy rate of all available rental units in the community, including houses.
- Proportionate need for project type.
- Building permits issued per year for the last 3 years for single and multiple unit dwellings.
- For proposals where the applicant is requesting LIHTCs, the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. This information will determine the levels of incomes in the market area, which will support the basic rents while also qualifying the applicant for tax credits.
- The amount of RA necessary to ensure the project's success.
- The annual income level of farmworker families in the area.
- A realistic estimate of the number of farm workers who remain in the area where they harvest and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (*i.e.,* single individuals as opposed to families).
- General information concerning the type of labor-intensive crops grown in the area and prospects for continued demand for farm laborers.
- The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (*i.e.,* will they rent to large families, do they require annual leases, etc.).
- The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers.
- Information on any proposed new construction of housing units within the primary market area.
- A description of the project's units, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or a community room and other facilities providing supportive services in connection with the housing and the needs of the tenants such as a health clinic or day care facility.
- The applicant must also include documentation of the following applicable elements and provide the page number of the report which contains the information that satisfies each element:
- Services available in the area include shopping, schools, and medical facilities as well as community services such as recreational, transportation, and day care. Services appear to be appropriate for the project type and within reasonable proximity of the site.
- Building permits issued during the past 3 years and new employment opportunities show the community to be growing, rather than declining.
- Major employers in the area provide employment opportunities sufficient to support a population base of renters for the proposed project.
- Employment rates for the area have been high over the past 5 years.
- The analyst makes realistic recommendations supported by the statistical information provided:
- Population characteristics and household data for the community are stable or show an increase during the past 5 years.
- Population characteristics by age shows support for the type of project

being proposed and the type of complex proposed reflects the greater proportionate need and demand of the community. To establish this, compare the share or percentage of the community's total rental units that are designated for the elderly (62 years or older or disabled) to the community's share of elderly households, and the share of total rental units for families to the share of family households in the community.

- For mixed projects, the unit mix must reflect the proportionate need of each household type.
- Statistical data showing households by income group shows that there are households in the eligible income group that could rent in the project.
- Historical breakdown of households by owners and renters shows that there is a tradition of renters.
- The Market Feasibility Documentation (MFD) addresses the need for more than just one and two bedroom units.
- The bedroom mix of the proposed units is proportional to the need in the market area based on renter household size and the bedroom mix of existing units.
- The bedroom mix of fully accessible units (5 percent) is comparable to the bedroom mix of non-accessible units.
- The MFD shows evidence of need for the housing in that there are rent overburdened households and/or households in substandard housing.
- A discussion of existing housing supply includes reference to the single-family housing rental and sale units available and shows these to be inadequate.
- Temporary residents of a community, including college students, military personnel, or others not claiming their current residence as their legal domicile, have not been included in determining need and project size.
- The MFD includes a discussion on the current market for single-family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. If the market study discusses how elderly homeowners reinforce the need for rental housing, it does so only as a secondary market and not as the primary market.
- The vacancy rates in existing rental housing, including available single-family housing and mobile homes, is 5 percent (or the State-approved vacancy standard, if different) or less, or there is an acceptable explanation where higher rates occur. Existing rental complexes should also show waiting lists.
- The Conventional Rents for Comparable Units (CRCU) shown is less than or equal to the rents proposed for the project.

The market study must be obtained from and performed by an independent third-party provider that has no identity of interest with the property owner, management agent, applicant or any other principle or affiliate.

Project funds may be used to obtain the market study if there are adequate funds available and the request to use project funds is approved by the Field Operations Division servicing official.

(l) Document the project has a positive cash flow. As provided earlier in this Notice, the applicant must provide documentation that the project had a positive cash flow for the previous full three (3) years of operations preceding this Notice's pre-application submission due date unless an exception applies for projects with an RHS approved workout plan where the applicant is in compliance with the provisions of the workout plan. The RHS may require that applicants with monetary or non-monetary deficiencies be in compliance with the RHS approved workout plan for a minimum of six (6) consecutive months before becoming eligible for a loan and/or grant under this Notice. Additionally, an exception may apply to projects that have a negative cash flow in operations if surplus cash exists in either the general operating account as defined in 7 CFR 3560.306(d)(1) or the reserve account. Surplus cash exists when the balance is greater than the required deposits minus authorized withdrawals. The applicant must provide the project's annual financial report(s) to document the project complies with this exception for each year the project has a negative cash flow, if applicable. Seasonal Off-FLH properties that receive OA may also be exempt from this requirement at the sole discretion of the RHS, if applicable.

(m) Current tenant supportive services plan which describes services that are currently provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility, if applicable. Off-site services must be accessible and affordable to farm workers and their families. A map showing the location of support services must be included in the plan, if applicable. Letters of commitment from the current service providers must also be submitted with the plan, if applicable. The plan must describe how the services are funded. Project funds may not be used to pay for these services, however, costs associated with a Resident Services Coordinator or coordination of resident services are an eligible expense and could be included in the project budget, if applicable.

(n) Preliminary plans and specifications, including type of construction and materials, if available. The preliminary plans and specifications, including type of construction and materials may be submitted with the final application. The housing must meet RHS's design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards. Also, applications for Off-FLH loans and grants must meet the design requirements in 7 CFR 3560.559.

For projects that do not currently have interior/exterior washing facilities, applicants should consider incorporating interior/exterior washing facilities for tenants, as necessary to protect the asset and the tenants from excess dirt and chemical exposure. Such facilities might include a boot washing station or hose bibs, among others.

(o) The applicant must submit a checklist, certification, and signed affidavit by the project architect or engineer, as applicable, for any energy programs the applicant intends to participate in.

(p) A Sources and Uses Statement which shows all sources of funding included in the proposed transaction. The terms and schedules of all sources included in the project should be included in the Sources and Uses Statement. (Note: A Section 516 grant may not exceed 90 percent of the TDC of the transaction)

(q) Evidence of the submission of the project description to the applicable State Housing Preservation Office (SHPO), and/or Tribal Historic Preservation Officer (THPO) with the request for comments, if applicable.

(r) Evidence of compliance with Executive Order 12372. The applicant must send a copy of Form SF–424, ''Application for Federal Assistance,'' to the applicant's State clearinghouse for intergovernmental review. If the applicant is located in a State that does not have a clearinghouse, the applicant is not required to submit the form. However, evidence that the State does not have a clearinghouse must be submitted. Applications from Federally recognized Indian tribes are not subject to this requirement.

(s) Comments regarding relevant offsite conditions.

(t) The following forms are required to be submitted with the pre-application:

(i) Awards made under this Notice are subject to the provisions contained in the Consolidated Appropriations Act, 2019 (Pub. L. 116–6) sections 745 and

746 regarding felony convictions and corporate Federal tax delinquencies. To comply with these provisions, applicants that are or propose to be corporations will submit form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' as part of their pre-application. This form is now collected through your registration or annual recertification in *SAM.gov* in the Financial Assistance General Certifications and Representations section.

(ii) Form HUD–935.2A, ''Affirmative Fair Housing Marketing Plan (AFHMP)-Multifamily Housing,'' in accordance with 7 CFR 1901.203(c). The AFHMP will reflect that occupancy is open to all qualified ''domestic farm laborers,'' regardless of which farming operation they work and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units. The AFHMP must include all attachments and supporting documentation. The form can be found at: *https://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.PDF.*

If the project has a current AFHMP in place that is approved by the RHS, the applicant may submit the current approved AFHMP as part of their pre-application.

The Native American Housing Enhancement Act of 2005 (NAHEA), Public Law 109–136, Codified at 25 U.S.C. 4101 et seq., amended Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) which created the housing programs administered by the U.S. Department of Agriculture, Rural Housing Service. The NAHEA excludes Indian Tribes, including instrumentalities of such Indian Tribes, from the requirement to comply with Title VI of the Civil Rights Act of 1964, and Title VIII of the Civil Rights Act of 1968, allowing members of Indian Tribes to be given preference for housing in accordance to the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4101 et seq.)

The NAHEA does not exempt Indian Tribes from complying with other laws that apply to recipients of federal financial assistance. Therefore, federally recognized Indian Tribes must continue to comply with Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title IX of the Education Amendments Act of 1972, where applicable. The NAHEA also did not exempt the Indian Tribes from complying with the accessibility requirements of the Fair Housing Amendments Act (FHAA) of 1988. This Act amended Title VIII of the Fair Housing Act of 1968, to include disability and familial status. Therefore, the NAHEA did not specifically exempt Indian Tribes from the accessibility requirements of the FHAA. The requirements to construct multi-family housing properties accessible to or adaptable for persons with disabilities are to be followed. This requirement shall be consistent with RD Instructions 7 CFR 3560, Section 3560.60, Design Requirements.

(iii) A proposed post-transaction operating budget utilizing Form RD 3560–7, ''Multiple Family Housing Project Budget/Utility Allowance,'' can be found at: *https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-7.PDF.* The budget must include the debt service of the new RHS loan, if applicable. This will be a post transaction budget that must include a narrative that provides justification for any changes between the current budget and proposed budget.

The RHS will review the budget to determine that the income and expenses are reasonable and customary for the area. The RHS will also verify that the budget reflects the new RHS loan debt service, if applicable, the existing RHS loan debt service, the number of units, unit mix, and rents. Overall, the RHS must review the budget for feasibility, accuracy, and reasonableness.

(iv) An estimate of development costs utilizing Form RD 1924–13, ''Estimate and Certificate of Actual Cost,'' can be found at: *https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF.*

(v) Form RD 3560–30, ''Certification of no Identity of Interest (IOI),'' can be found at: *https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-30.PDF.*

(vi) Form RD 3560–31, ''Identity of Interest Disclosure/Qualification Certification,'' can be found at: *https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-31.PDF.*

An IOI is defined in 7 CFR 3560.11. The RHS must review Form RD 3560–30 and Form RD 3560–31, as applicable, to determine if they are completed in accordance with the Forms Manual Insert and to determine that all IOI's have been disclosed. Technical assistance will not be funded by the RHS when an IOI exists between the technical assistance provider and the loan or grant applicant.

(vii) Form HUD 2530, ''Previous Participation Certification,'' if applicable, can be found at: *https://www.hud.gov/sites/dfiles/OCHCO/documents/2530.pdf.*

Applicants are strongly encouraged to use the Active Partners Performance System (APPS) available on HUD's website to electronically submit the Form HUD 2530 for HUD staff review and approval, if applicable. If obtained, the applicant would submit the review from HUD indicating approval in the application. The website can be found at: *https://www.hud.gov/program_offices/housing/mfh/apps/appsmfhm.*

(viii) Form RD 400–4, ''Assurance Agreement,'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.*

(ix) RD Instruction 1940–Q, Exhibit A–1, ''Certification for contracts, grants and loans,'' can be found at: *https://www.rd.usda.gov/files/1940q.pdf.*

(u) A separate one-page information sheet listing each of the pre-application scoring criteria contained in this Notice, followed by a reference to the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria.

Applicants are encouraged to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

If any of the required items listed above are not submitted within the pre-application in accordance with this Notice or are incomplete, the pre-application will be considered incomplete and will not be considered for funding.

The RHS will not consider information from the applicant after the pre-application deadline. The RHS may contact the applicant to clarify other items in its application. The RHS will uniformly notify applicants of each curable deficiency. A curable deficiency is an error or oversight that if corrected it would not alter, in a positive or negative fashion, the review and rating of the application. An example of a curable (correctable) deficiency would be inconsistencies in the amount of the funding request. Non-curable deficiencies are threshold components that effect the review and rating of the application, including but not limited to, evidence of an eligible entity and evidence of the need for the project.

D. Pre-Application Review Information

The RHS will accept, review, and score pre-applications in accordance with this Notice.

Section 514 Off-FLH subsequent loan funds and Section 516 Off-FLH subsequent grant funds will be distributed based on a national competition, as follows:

(1) Updates or enhancements (12 points). This factor is for applications that include updates or enhancements to existing plans to meet current tenant needs and enhance the marketability of the property. The updated or revised tenant supportive services plan must be submitted and describe the existing supportive services and the proposed new or enhanced tenant services, including a description of the public or private funds that are expected to fund the new services as well as the way the services will be delivered, who will administer them, and where they will be administered. All tenant supportive services plans must include letters of commitment that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant. These services may include, but are not limited to, transportation related services, on-site English as a Second Language classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. The tenant supportive services plan must describe how the new or enhanced services will meet the identified needs of the tenants and how the services will be provided on a consistent, long-term basis to support the tenants. The plan must clearly state how the services will be funded. Project funds may not be used to pay for these services, however, costs associated with a Resident Services Coordinator or coordination of resident services are an eligible expense and could be included in the project budget, if applicable. Applicants must provide a detailed tenant supportive services plan and clearly document and outline at least two new or enhanced services in relation to the services already being provided in order to receive the maximum amount of points.

(2) Owner and management capacity (25 points). This factor addresses the extent to which the applicant, or a member of the applicant's team, and the management agent has the experience and organizational resources to successfully implement the proposed activities in a timely manner. In this rating factor, the RHS will consider the extent to which the application demonstrates the applicant's and management agent's ability to develop, operate, and manage FLH on a long-term basis. In the case of co-sponsored applications, the rating will be based upon the combination of the experience of all co-sponsors in the area under review.

A firm resume must be provided for the applicant and all Sponsors/Co-Sponsors, including the management agent. Each resume must include evidence of development experience and services experience, as applicable. In addition, the resume should include a description of all similar projects that the applicant and Sponsors/Co-Sponsors have been involved with, to include whether they were federal housing projects, and information regarding the success of the projects.

(3) Development Experience (15 points). Applicants should demonstrate how the scope, extent, and quality of the Sponsor's and/or their consultant team's recent experience in developing, operating and managing housing is consistent with the details of the proposed project. The evaluation will consider experience with utilizing federal financing programs and experience that shows familiarity with FLH and experience operating federally assisted housing, which may be demonstrated by providing supporting data related to actual performance. Also, the evaluation will consider if funds that were received for previous transactions were spent within the regulatory timeframes of the funding source. The description or firm resumes must include any rental housing projects and supportive services facilities that the applicant sponsored, owns or operates.

The RHS will make a determination on the level of experience of the applicant, all Sponsors/Co-Sponsors, if applicable, and the management agent based on the information and documentation presented within the pre-application. Points will be awarded as follows:

- No development experience (0 points)
- Low level of development experience—less than 50 units (2 points)
- Medium level of development experience—more than 50 units (5 points)
- High level of development experience—over 100 units (15 points)

To score the highest number of points for this factor, applicants must describe significant previous experience in providing housing to farm laborer's generally and significant previous experience implementing development activities with the type of financing proposed.

(4) Supportive Services Experience (10 points). Applicants should demonstrate how the scope, extent, and quality of the applicant's experience and/or the experience of committed partners, including property managers, in providing services is consistent with the details of the proposed supportive services plan. The description and firm resumes must identify specific services provided. Applicants must explain their experience in RHS subsidy administration and/or their partners' experience in providing property management and coordinating supportive services.

The RHS will make a determination on the level of experience of the applicant and all Sponsors/Co-Sponsors, if applicable, based on the information and documentation presented within the pre-application. Points will be awarded as follows:

- No supportive services experience (0 points)
- Low level of supportive services experience—less than 50 units (2 point)
- Medium level of supportive services experience—more than 50 units (5 points)
- High level of supportive services experience—over 100 units (10 points)

To score the highest number of points for this factor, applicants and/or committed partners must describe and provide evidence of significant previous experience in providing and coordinating supportive services to farm laborers.

(5) Market (18 points). Applicants must demonstrate that the location of the project supports farm labor housing. The applicant must identify the location, the proximity, and ease of access of the project site to amenities important to the residents that supplement the services provided on-site. The site location will be rated on the following:

- Health care and social services (hospital, medical clinic, social service organization that offers services to farm workers) (3 points);
- Grocery stores (*e.g.,* supermarket or other store that sells produce and meat) (3 points);
- Recreational facilities (*e.g.,* parks and green space, community center, gym, health club, or family entertainment venue, library) (3 points);
- Civic facilities (*e.g.,* place of worship, police or fire station, post office) (3 points);
- Other neighborhood-serving amenities (*e.g.,* apparel store, convenience store, pharmacy, bank, hair care, and restaurants) (3 points).
- Educational facilities adequate to meet the spectrum of tenant needs at the property (*e.g.,* higher education institutions, K–12, pre-k, and childcare) (3 points).

Applicants must describe how residents could reasonably access critical amenities. Amenities will generally be considered readily available if they are within one-half mile walking distance or they can be accessed by public transportation (within one-quarter walking mile) including accessible public transportation option, and/or affordable private door-to-door shuttle/van service that is reliable and accessible. Applicants may commit to providing such transportation services if the nature of the commitment and the financing of the commitment is adequately described. Project funds cannot be used for this purpose.

To score the maximum number of points on this factor, applicants must make a compelling argument that the location of the project is well suited with respect to proximate amenities to meet the needs of farm workers. Documentation must be provided that clearly outlines the project site and its proximity to the applicable amenities.

(6) COVID–19 Impacts (5 points). Priority points will be awarded if the project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score in the United States. if the project is located in or serving one of the top 10% of counties or county equivalents based upon the county risk score in the United States. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points.* The US Territories would obtain points by using local data regarding how COVID–19 has impacted the project area. Priority points may be awarded if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points.*

(7) Equity (5 points). Priority points will be awarded if the project is located in or servicing a community with a score of 0.75 or above on the CDC Social Vulnerability Index. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points.*

(8) Climate Impacts (5 points). Priority points will be awarded if the project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points.*

(9) Points will be allocated for Energy initiatives (the aggregate points for all the Energy Initiative categories may not exceed (10 points).

(a) Properties may receive points for energy initiatives in the categories of energy conservation, water conservation and green property management. Properties may earn ''energy initiative'' points for rehabilitation.

(b) National energy programs including the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED), National Association of Homebuilders 2020 ICC 700 National Green Building Standard, U.S. Department of Energy (DOE) Zero Energy Ready Homes, International Living Future Institute's Living Building Challenge, U.S. Environmental Protection Agency (EPA) Energy Star for Homes, Passive House Institute's PHIUS +, Enterprise Community Partners Green Communities, and local energy conservation programs, will each have an initial checklist indicating prerequisites for participation in its energy program. The applicable energy program checklist will establish whether prerequisites for the energy program's participation will be met. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable, and the project has been enrolled in these programs if enrollment is applicable to that program. These programs evolve and newer versions are published, sometimes annually. Projects must participate in the current version of the programs and must consult with the program provider for the most current, applicable and available programs for their project location. In addition, projects that apply for points under the energy generation category must include calculations of savings of energy. Compare property energy usage of three scenarios: (1) Property built to required code of state with no renewables, to (2) property as-designed with commitments to stated energy conservation programs without the use of renewables and (3) property as-designed with commitments to stated energy conservation programs and the use of proposed renewables. Use local average metrics for weather and utility costs and detail savings in kWh and dollars. Provide payback calculations. These calculations must be done by a licensed engineer or credentialed renewable energy provider. Include with the application, the provider/engineer's credentials including qualifications, recommendations, and proof of previous work. The checklist, affidavit, calculations, and qualifications of the engineer/energy provider must be submitted together with the pre-application.

(c) Enrollment in EPA Portfolio Manager Program. All projects awarded scoring points for energy initiatives must enroll the project in the EPA Portfolio Manager program to track post-construction energy consumption data. More information about this program may be found at: *https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.*

(d) Energy Conservation for rehabilitation. Projects may be eligible for scoring points when the pre-application includes a written certification by the applicant to participate and achieve certification in the following energy efficiency programs.

The points will be allocated as follows:

- Participation in the EPA's Energy Star Multifamily Certification Process (5 points). *https://www.energystar.gov/partner_resources/residential_new/homes_prog_reqs/multifamily_national_page*

or

- Participation in the Green Communities program by the Enterprise Community Partners (2020 Criteria). (5 points) *https://www.enterprisecommunity.org/solutions-and-innovation/green-communities*

or

- Participation in the DOE Zero Energy Ready Homes program. (5 points) *https://www.energy.gov/eere/buildings/zero-energy-ready-homes*

or

- PHIUS+ Passive Building Standard (2018) (5 points) *https://multifamily.phius.org/service-category/phius-within-reach*

or

- International Living Future Institute Living Building Challenge (5 points) *https://living-future.org/lbc/.*

(e) Water Conservation in Irrigation Measures. Projects may be awarded two points (2 points) for the use of an engineered recycled water (gray water or storm water) for landscape irrigation covering 50 percent or more of the property's site landscaping needs.

(f) Property Management Credentials. Projects may be awarded three points (3 points) if the designated property management company or individuals that will assume maintenance and operation responsibilities upon completion of construction work have a Credential for Green Property Management. Credentialing can be

obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, The Institute for Real Estate Management, USGBC LEED for Operations and Maintenance, or another source with a certifiable credentialing program. Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application.

E. Federal Award Administration Information

(1) Federal Award Notices

(a) Applicants must submit their pre-application by the due date specified in this Notice. The RHS will rank by score, highest to lowest, eligible pre-applications. Based on available funding, the 10 percent persistent poverty counties set-aside, and the 50 percent limitation per State, the RHS will determine which pre-applications will be selected for further processing starting with the highest scoring pre-application. The RHS will notify applicants with pre-applications found eligible and selected for further processing.

(b) Applicants will be notified if there are insufficient funds available for the proposal and such notification is not appealable. For applications found ineligible or incomplete, the RHS will send notices of ineligibility that provide appeal rights under 7 CFR part 11, as appropriate.

(c) The RHS will rank all pre-applications nationwide. When proposals have an equal score and not all pre-applications can be funded, preference will be given first to Indian tribes as defined in § 3560.11, then local non-profit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of § 3560.55(c), and the following conditions:

- Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Service code;
- Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;
- Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;
- Is not co-venturing with another entity; and
- The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(d) If after all the above evaluations are completed and there are two or more pre-applications that have the same score, and all cannot be funded, a lottery will be used to break the tie. The lottery will consist of the names of each pre-application with equal scores printed onto a same size piece of paper, which will then be placed into a receptacle that fully obstructs the view of the names. The Director of the Production and Preservation Division, in the presence of two witnesses, will draw a piece of paper from the receptacle. The name on the piece of paper drawn will be the applicant to be funded.

If insufficient funds remain for the next ranked proposal, that applicant will be given a chance to modify their pre-application to bring it within the remaining available funding. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted.

(2) Administrative and National Policy

Projects receiving subsequent Off-FLH loans and/or grants are subject to additional restrictive-use provisions contained in 7 CFR 3560.72(a)(2).

(a) An FLH grant agreement, prepared by the RHS, must be dated, and executed by the applicant on the date of closing, if applicable. The form of resolution to be adopted by the applicant must contain policy and procedural requirements that should be read and be fully understood by the applicant's Board of Directors and officers.

(b) The grant agreement will remain in effect for so long as there is a need for the FLH project and will not expire until an official determination has been made by the RHS that there is no longer a need for the FLH project, if applicable.

(3) Reporting

(a) Borrowers must maintain separate financial records for the operation and maintenance of the project and for tenant services.

(b) Project funds may not be used to pay for these services, however, costs associated with a Resident Services Coordinator or coordination of resident services are an eligible expense and could be included in the project budget, if applicable.

(c) Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of tenant services, nor may tenant service funds be used to supplement the project operation and maintenance.

(d) Detailed financial reports regarding tenant services will not be required unless specifically requested by the RHS, and then only to the extent necessary for the RHS and the borrower to discuss the affordability (and competitiveness) of the service provided to the tenant.

(e) The project audit, or verification of accounts on Form RD 3560–10, ''Borrower Balance Sheet,'' together with an accompanying Form RD 3560–7, ''Multiple Family Housing Project Budget/Utility Allowance,'' must allocate revenue and expenses between project operations and the tenant services component.

F. Preliminary Eligibility Assessment

The RHS shall make a preliminary eligibility assessment using the following criteria:

(1) The pre-application was received by the submission deadline specified in this Notice;

(2) The pre-application is complete as specified by this Notice;

(3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

(4) The proposal is for authorized purposes.

G. Final Application and Submission Information

(1) Final Application Submission

(a) The pre-applications that are selected for further processing will be invited to submit final applications. If a pre-application is selected for further processing and the applicant declines, the next highest ranked pre-application will be selected for further processing. The final applications will be due by June 30, 2022, 12 p.m., Eastern Standard Time.

(b) All final applications must be filed with the RHS and must meet the requirements of this Notice. Incomplete final applications will be rejected and returned to the applicant. No final applications will be accepted after the deadline unless the date and time are extended by another Notice published in the **Federal Register**.

(c) A final application in accordance with this Notice must be submitted and approved by the RHS prior to the obligation of funds.

(d) The final application submission process will be the same as previously explained and outlined for the pre-application submission process in Section C(1), ''Pre-application and Submission Information.''

(2) Final Application Requirements

The final application must contain the following information in addition to the pre-application documents that were previously submitted:

(a) Description of any changes from the pre-application submission including funding, scope of work, etc.

(b) If any document that was submitted within the pre-application has since changed or needs to be updated with the final application, please submit the updated form(s) with the final application:

(i) Final Form RD 3560–1, ''Application for Partial Release, Subordination, or Consent,'' can be obtained at: *https://formsadmin.sc.egov.usda.gov//efcommon/eFileServices/eFormsAdmin/RD3560-0001.pdf.*

(ii) Final Standard Form 424, ''Application for Federal Assistance.''

(iii) Final proposed Form RD 1924–13, ''Estimate and Certificate of Actual Cost.''

(iv) Final proposed post-transaction operating budget utilizing Form RD 3560–7, ''Multiple Family Housing Project Budget/Utility Allowance.'' The budget must include the debt service of the new RHS loan, if applicable. This will be a post transaction budget that must include a narrative that provides justification for any changes between the current budget and proposed budget.

(c) Updated financial statements, if applicable (must be within 6 months of this Notice's final application submission due date).

(d) Submit a current (no older than six months from the date of issuance) combination comprehensive credit report for both the entity and the actual individual principals, partners, members, etc. within the applicant entity, including any sub-entities, who are responsible for controlling the ownership and operations of the entity. Although a commercial credit report for a new entity may have limited information available, a combination report ties the entity and individual principal(s) together under the applicant/borrower name based on the credit report agency's ability to provide a single reporting source. However, if any of the principals in the applicant entity are not natural persons (*i.e.,* corporations, other limited liability companies, trusts, etc.) separate commercial credit reports must be submitted on those organizations as well. Individual personal consumer credit reports are not required if a combination report is being provided. Only Credit reports provided by accredited major credit bureaus will be accepted. If the credit report(s) is not submitted by the final application deadline, the application will be considered incomplete and will not be considered for funding.

(e) Document the continued need for the project. The applicant must provide documentation that the average physical vacancy rate for the twelve (12) months preceding this Notice's final application submission due date has been no more than ten (10) percent for projects consisting of sixteen (16) or more revenue units and no more than fifteen (15) percent for projects with less than sixteen (16) revenue units unless the project is seasonal Off-FLH or unless the applicant has an RHS approved workout plan and is in compliance with the provisions of the workout plan and provides sufficient market documentation or a market study that clearly demonstrates to the RHS that sufficient market demand exists. If the project is seasonal Off-FLH, the applicant must provide detailed documentation for the twenty-four (24) months preceding this Notice's final application submission due date that verifies the project's operations including information regarding the open and close date, lease-up, vacancy, rent rolls, operating budgets, and any other information the applicant can provide to document the need for the seasonal Off-FLH project. All of the tenants in the project must be eligible farm labor tenants as defined in this Notice.

(f) Document the project has maintained a positive cash flow. The applicant must provide documentation that the project had a positive cash flow for the previous full three (3) years of operations preceding this Notice's final application submission due date unless an exception applies for projects with an RHS approved workout plan where the applicant is in compliance with the provisions of the workout plan and has remained in compliance. The RHS may require that applicants with monetary or non-monetary deficiencies be in compliance with the RHS approved workout plan for a minimum of six (6) consecutive months before becoming eligible for a loan and/or grant under this Notice. Additionally, an exception may apply to projects that have a negative cash flow in operations if surplus cash exists in either the general operating account as defined in 7 CFR 3560.306(d)(1) or the reserve account. Surplus cash exists when the balance is greater than the required deposits minus authorized withdrawals. The applicant must provide the project's annual financial report(s) to document the project complies with this exception for each year the project has a negative cash flow, if applicable. Seasonal Off-FLH properties that receive OA may also be exempt from this requirement at the sole discretion of the RHS, if applicable.

(g) Form RD 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts'' can be found at: *https://forms.sc.egov.usda.gov//efcommon/eFileServices/eForms/RD1910-11.PDF.*

(h) Form RD 400–1, ''Equal Opportunity Agreement,'' can be found at: *https://forms.sc.egov.usda.gov/eForms/browseFormsAction.do?pageAction=displayPDF&formIndex=1.*

(i) Form RD 400–6, ''Compliance Statement,'' if available, can be found at: *https://forms.sc.egov.usda.gov/eForms/browseFormsAction.do?pageAction=displayPDF&formIndex=4.*

The following forms for acceptance of a federal award are now collected through your registration or annual recertification in *SAM.gov* in the Financial Assistance General Certifications and Representations section:

(j) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions,'' can be found at: *https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1047_PrimaryCoveredTransactions_final.pdf.*

(k) Form AD–1048, ''Certification of Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions,'' if applicable, can be found at: *https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1048_LowerTierCoveredTransactions_final.pdf.*

(l) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals,'' can be found at: *https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1049_Alt1_GranteesOtherThanIndividuals_v2_final.pdf. https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1049_Alt1_GranteesOtherThanIndividuals_v2_final.pdf.*

(m) Form RD 3560–13, ''Multi-Family Project Borrower's/Management Agent's Management Certification,'' if applicable, can be found at: *https://forms.sc.egov.usda.gov//efcommon/eFileServices/eForms/RD3560-13.PDF.* This document is required only if the owner is changing the management agent or the management fee as part of this proposal.

(n) Management plan with all attachments including the proposed record keeping system, the proposed lease with an attorney's certification, if applicable, and the proposed occupancy rules. This document is required only if the owner is changing the management agent or revising the management plan and any attachments as part of this proposal.

(o) Management Agreement, if applicable. This document is required only if the owner is changing the

management agent or revising the management agreement and any attachments as part of this proposal.

(p) Certificate of Good Standing.

(q) Attorney Certification. Letter from the applicant's attorney certifying the legal sufficiency of the organizational documents. The attorney must certify:

(1) The applicant's legal capacity to successfully operate the proposed project for the life of the loan and/or grant.

(2) The organizational documents comply with RHS regulations.

(3) For partnership purchasers, that the term of the partnership extends at least through the latest maturity of all proposed RHS debt.

(4) That the organizational documents required prior written RHS approval for any of the following: Withdrawal of a general partner/managing member, admission of a general partner/managing member, amending the organizational documents, and selling all or substantially all of the assets of the purchaser.

(5) That there have been no changes to either the ownership entity or the property that have not been approved by the RHS.

(r) Acceptable appraisal, if applicable. Applicants may contact the RHS to discuss the appraisal requirements including the Appraisal Assignment Guidance prior to engaging an appraiser. Appraisals prepared for any other participants or lenders may not satisfy the RHS Appraisal Assignment Guidance requirements and may require the applicant to incur additional costs. You may contact the RHS at *MFHprocessing1@usda.gov* to obtain Appraisal Assignment Guidance prior to ordering the appraisal.

Project funds may be used to obtain the appraisal if there are adequate funds available and the request to use project funds is approved by the Field Operations Division servicing official. No appraisal is required for subsequent Section 516 Off-FLH grant only requests.

(s) An acceptable As-Is CNA in accordance with the requirements set forth in this funding notice and the addendum to this notice.

- The minimum requirements for a CNA acceptable to the RHS can be found in the Addendum: Capital Needs Assessment Process at the end of this notice, Attachment B, CNA Statement of Work and Attachment C, Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator.
- The CNA report must be obtained by the CNA recipient from an independent third-party CNA provider that has no identity of interest with the property owner, management agent, applicant or any other principle or affiliate.
- The CNA recipient will contract with the CNA provider and is therefore, the client of the provider. However, the CNA recipient must consult with RHS, before contracting with a CNA provider to review Guidance Regarding Contracting for a CNA.
- The RHS CNA reviewer will evaluate a proposed agreement or engagement letter between the CNA recipient and the CNA provider using Attachment D, CNA e-Tool Estimated Useful Life Table, prior to reviewing any CNA report.
- Unacceptable CNA proposals, contracts or reports will be returned to the CNA recipient for appropriate corrections before they will be used for any underwriting determinations.
- The CNA reviewer will also review the cost of the CNA contract. In most cases, the CNA service contract amount has not exceeded $3,500 based on the RHS's most recent cost analysis. Borrowers and applicants are encouraged to obtain multiple bids in all cases. However, there is no RHS requirement to select the ''low bidder.''
- All of the information and requirements, including the CNA Template that the can must be submitted on, can be found at: *https://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans.*

Project funds may be used to obtain the As-Is CNA if there are adequate funds available and the request to use project funds is approved by the Field Operations Division servicing official. The rehabilitation plan should be developed in accordance with the CNA and the applicant should submit documentation of the detailed plan and timeline for completion of the rehabilitation work.

(t) Final plans and specifications along with the proposed manner of construction, if available. The housing must meet RHS's design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards. The final plans and specifications along with the proposed manner of construction must be submitted prior to the approval of the final application.

(u) Final construction planning, bidding, and contract documents, including the construction contract and architectural agreement, etc., if available. The final construction planning, bidding, and contract documents, including the construction contract and architectural agreement, etc., must be submitted prior to the approval of the final application.

(v) Environmental information in accordance with the requirements in 7 CFR 1970. The applicant may consult with the RHS to determine the appropriate level of environmental review and to obtain publicly available resources at the earliest possible time for guidance in identifying all relevant environmental issues that must be addressed and considered during early project planning and design throughout the process. Requests for a consult can be sent to the following email address: *MFHprocessing1@usda.gov.* The applicant is responsible for preparing and submitting the environmental review document in accordance with the format and standards provided by RHS in 7 CFR 1970. Applicants may employ a design or environmental professional or technical service provider to assist them in the preparation of their environmental review documents at their own expense.

(w) The environmental information must include evidence of compliance with the requirements of the applicable State Housing Preservation Office (SHPO), and/or Tribal Historic Preservation Officer (THPO), if applicable. A letter from the SHPO and/or THPO where the Off-FLH project is located signed by their designee will serve as evidence of compliance, if applicable.

(x) All applications that propose the use of any leveraged grant funds must submit firm commitment letters within their final application, if available. This includes any interim lender commitment letters with evidence of license to do business in the applicable state. If the applicant is unable to secure third-party firm commitment letters within 180 calendar days from the issuance of the award letter under this NOFA, the application will be deemed incomplete, and the award letter will be considered null and void and the applicant will be notified in writing that the application will be rejected.

(y) Description of how the applicant will meet the equity contribution requirement as applicable.

(z) Signed statement from the applicant agreeing to pay cost overruns.

(aa) Tenant relocation plan, if applicable. Subsequent Section 514 Off-FLH loans or subsequent Section 516 Off-FLH grants that are made for major repair and rehabilitation may require the temporary relocation of tenants while the project is undergoing work. The applicant must provide a plan and financial assistance for relocation of displaced persons from a site on which a project will be located. The plan must

meet the requirements of HB–1–3560, Chapter 3, Paragraph 3.19.

(3) Final Application Guidance

The RHS will follow 7 CFR 3560 and this Notice for the processing of final applications. Final applications will need to follow the bidding process as set forth in 7 CFR part 1924.

(4) Documentation of Underwriting and Costs

(a) All final applications including the loan and/or grant requests will be analyzed using an underwriting template that the RHS has developed. A complete analysis and underwriting of the proposed transaction will be completed to ensure all regulatory requirements are met and to ensure overall project feasibility as well as to determine the minimum amount of assistance that is needed for the proposal.

(b) Once the loan and/or grant funds have been obligated, the applicant should be prepared to close the transaction and promptly complete construction within 12–18 months.

(5) Technical Assistance Providers

Please be aware that technical assistance services may not be used to reimburse a nonprofit or public body applicant for technical services provided by a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the development and packaging of its loan/grant docket and project. In addition, technical assistance will not be funded by the RHS when an identity of interest exists between the technical assistance provider and the loan or grant applicant. Identity of interest is defined in 7 CFR 3560.11. In instances where technical assistance is allowed, eligible costs will be limited to those allowed under 2 CFR part 200.

(6) Equal Opportunity Survey

RHS should provide applicants the voluntary OMB 1890–0014 form, ''Survey on Ensuring Equal Opportunity for Applicants'', (or other forms currently being used by RHS) and ask the applicant to complete it and return it to the RHS.

(7) Substantial Portion of Income From Farm Labor

The Notice restates the requirement that domestic farm laborers must receive a substantial portion of their income from ''farm labor.'' Further explanation of this requirement can be found in the regulation at 7 CFR 3560.576(b)(2) and this notice for processing of final applications. The term ''farm labor'' is defined in 7 CFR 3560.11.

G. Paperwork Reduction Act

The information collection requirements contained in this Notice have received approval from the Office of Management and Budget (OMB) under Control Number 0575–0189.

H. Equal Opportunity and Non-Discrimination Requirements

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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

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

(2) *Fax:* (202) 690–7442; or

(3) *Email at: program.intake@usda.gov.*

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

Addendum: Capital Needs Assessment Process

A Capital Needs Assessment (CNA) provides a repair schedule for the property in its present condition, indicating repairs and replacements necessary for a property to function properly and efficiently over a span of 20 years.

The purpose of this Addendum is to provide clarification and guidance on the Rural Development CNA process. The document includes general instructions used in completing CNA reports, specific instructions on how to use the expected useful life tables, and a set of applicable forms including the Terms of Reference form; Systems and Conditions forms; and Evaluator's Summary forms.

1. Definitions

The following definitions are provided to clarify terms used in conjunction with the CNA process:

CNA Recipient: This will be who enters into the contract with the CNA Provider. The Recipient can be either the property owner or applicant/transferee.

''*As-Is*'' *CNA:* This type of CNA is prepared for an existing MFH property and reports the physical condition including all Section 504 Accessibility and Health and Safety items of the property based on that moment in time. This CNA can be useful for many program purposes other than the MPR Demonstration program such as: an ownership transfer, determining whether to offer pre-payment aversion incentive and evaluating or resizing the reserve account. The ''as-is'' report will include all major repairs and likely some minor repairs that are typically associated with the major work: Each major component, system, equipment item, etc. inside and outside; building(s); property; access and amenities in their present condition. A schedule of those items showing the anticipated repair or replacement timeframe and the associated hard costs for the ensuing 20-year term of the CNA serves as the basis or starting point in evaluating the underwriting that will be necessary to determine the feasibility and future viability of the property to continue serving the needs of eligible tenants.

''*Post Rehabilitation*'' *CNA:* This type of CNA builds on the findings of the accepted ''as-is'' CNA and is typically prepared for a project that will be funded for major rehabilitation. The Post Rehabilitation CNA is adjusted to reflect the work intended to be performed during the rehabilitation. The

assessment must be developed from the rehabilitation project plans and any construction contract documents to reflect the full extent of the planned rehabilitation.

Life Cycle Cost Analysis (LCCA): A LCCA is an expanded version of a CNA and is defined at 7 CFR Section 3560.11. The LCCA will determine the initial purchase cost, the operation and maintenance cost, the ''estimated useful life'', and the replacement cost of an item selected for the project. The LCCA provides the borrower with the information on repair or replacement costs and timeframes over a 20-year period. It also provides information that will assist with a more informed component selection and can provide the borrower with a more complete financial plan based on the predictive maintenance needs associated with those components. If the newly constructed project has already been completed without any previous LCCA requirements, either an ''as-is'' CNA or LCCA can be provided to establish program mandated reserve deposits. An Architect or Engineer is the best qualified person(s) to prepare this report.

Consolidation: In some circumstances, RD may permit two or more properties to be consolidated as defined in 7 CFR 3560, § 3560.410 when it is in the best interests of the Government. The CNA Recipient must consult with the RD loan official before engaging the CNA Provider in any case where the CNA intends to encompass more than a single (one) existing RD property to determine if a consolidated CNA may be acceptable for RD underwriting.

2. Contract Addendum

RD uses a Contract Addendum to supplement the basic CNA Agreement or ''Contract'', between the CNA Recipient and CNA Provider, with additional details and conditions. It can be found in *Attachment A, Addendum to Capital Needs Assessment Contract* and must accompany all contracts executed between the CNA Recipient and CNA Provider for CNAs used in RD transactions. If any conflicts arise between the ''Contract'' and ''Contract Addendum'', the ''Contract Addendum'' will supersede.

The Contract Addendum identifies the responsibilities and requirements for both the CNA Recipient and the CNA Provider. To assure proper completion of the contract documents the following key provisions must be completed:

a. The Contract Addendum will include the contract base amount for the CNA Provider's cost for services on page A–2, and provisions for additional services to establish the total price for the CNA.

b. Item I e, will require an itemized listing for any additional anticipated services and their unit costs including future updates and revisions that may be required before the CNA is accepted by RD. *Note: Any cost for updating a CNA must be included, in the* ''*additional services*'' *subpart, of the original CNA Contract.*

c. The *selection criteria boxes* in II a, will identify the type of CNA being provided.

d. In III a, the required language for the blank on ''report format'' is: ''*USDA RD CNA Template, current RD version, in Microsoft Excel format*''. This format will import directly into the RD underwriting template for loan underwriting purposes.

3. Requirements and Statement of Work (SOW) for a CNA

Minimum requirements for a CNA acceptable to RD can be found in *Attachment B, Capital Needs Assessment Statement of Work.* This is supplemented by *Attachment C, Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator.* To resolve any inconsistency in the two documents, Attachment B, the CNA SOW, will in all cases prevail over *Attachment C,* Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator. (For example, on page C–2 of Attachment C, Fannie Mae defines the ''term'' as ''term of the mortgage and two years beyond''. For USDA, the ''term'' will be 20 years, as defined in the CNA SOW.)

Attachment B includes the required qualifications for the CNA Provider, the required SOW for a CNA assignment, and general distribution and review instructions to the CNA Provider. The CNA Providers must be able to report the current physical condition of the property and not base their findings on the financial condition of either the property or the CNA Recipient.

Attachment C is a three-part document RD has permission to use as reference to the CNA process throughout the RD MFH program efforts. The three key components of this Attachment are: (1) Guidance to the property evaluator; (2) expected useful life tables; and (3) a set of forms.

An acceptable CNA must appropriately address within the report and narrative all Accessibility Laws and Requirements that apply to Section 515 and Sections 514/516 MFH properties. The CNA Provider must assess how the property meets the requirements of accessibility to persons with disabilities in accordance the Uniform Federal Accessibility Standards (UFAS) and Section 504 Accessibility Requirements. It is the responsibility of the Provider to inspect and verify whether all accessibility features are compliant.

4. The CNA Review Process

A CNA used by RD will be reviewed by the designated RD CNA Reviewer with experience in construction, rehabilitation, and repair of MFH properties, especially as it relates to repair and replacement.

A CNA report must be obtained by the CNA Recipient from an *independent third-party CNA Provider that has no identity of interest* with the property owner, management agent, applicant/transferee or any other principle or affiliate defined in *7 CFR part 3560,* § 3560.11. The CNA Recipient will contract with the CNA Provider and is therefore the client of the provider. However, the CNA Recipient must consult with RD, before contracting with a CNA Provider to review *Guidance Regarding Contracting for a CNA.* The RD CNA Reviewer will evaluate a proposed agreement or engagement letter between the CNA Recipient and the CNA Provider using *Attachment D, Capital Needs Assessment Guidance to the Reviewer,* prior to reviewing any CNA report. Unacceptable CNA proposals, contracts or reports will be returned to the CNA Recipient for appropriate corrections before they will be used for any underwriting determinations.

The CNA Reviewer will also review the cost of the CNA contract. The proposed fee for the CNA must be approved as an eligible housing project expense under 7 CFR 3560.103 (c) for the agreement to be acceptable and paid using project funds. In most cases, the CNA service contract amount has not exceeded $3,500 based on the Agency's most recent cost analysis.

Borrowers and applicants are encouraged to obtain multiple bids in all cases. However, there is no Agency requirement to select the ''low bidder'' under this UL and the CNA Recipient may select a CNA Provider that will provide the best value, based on qualifications, as well as price after reviewing references and past work.

If the CNA is funded by the property's reserve account, a minimum of two bids is required if the CNA service contract amount is estimated to exceed $5,000 as specified in HB–2–3560, Chapter 4, Paragraph 4.17 B. If the CNA contract under this UL is funded by another source, or will be under $5,000, a single bid is acceptable.

If the proposed agreement is acceptable, the reviewer will advise the appropriate RD servicing official, who will in turn inform the CNA Recipient. If the proposed agreement is unacceptable, the reviewer will notify the servicing official, who will notify the CNA Recipient and the CNA Provider in writing and identify actions necessary to make the proposed CNA agreement acceptable to RD. Upon receipt of a satisfactory agreement, the RD CNA Reviewer should advise the appropriate RD servicing official or underwriting official to accept the proposal.

The CNA Reviewer will review the preliminary CNA report submitted to RD by the CNA Provider using Attachment D and write the preliminary CNA review report. During the CNA review process, the CNA Reviewer and underwriter will consult with the servicing field office most familiar with the property for their input and knowledge of the property. Any differences of opinion that exist regarding the findings must be mutually addressed by RD staff. If corrections are needed, the loan official will notify the CNA Recipient, in writing, of any revisions necessary to make the CNA report acceptable to RD. The CNA Reviewer will review the final CNA report and deliver it to the loan official. The final report must be signed by both the CNA Reviewer and the loan official (underwriter). Upon signature by both, this report becomes the ''accepted'' CNA indicating the actual condition of the property at the time of the CNA inspection—a ''snapshot'' in time—and will be marked ''Current Property Condition'' for indefinite retention in the borrower case file.

A CNA Provider should be fully aware of the intended use for the CNA because it can impact the calculations necessary to perform adequate accessibility assessments and can impact the acceptability of the report by RD. Unacceptable reports will not be used for any RD underwriting purposes even though they may otherwise be acceptable to the CNA Recipient or another third-party lender or participant in the transaction being proposed.

5. Guidance Regarding Contracting for a CNA

CNA Recipients are responsible for choosing the CNA Provider they wish to contract with, and for delivering an acceptable CNA to Rural Development. *RD in no way guarantees the performance any Provider nor the acceptability of the Provider's work.*

CNA Recipients are advised to request an information package from several CNA Providers and to evaluate the information before selecting a provider. At a minimum, the information package should include a list of qualifications, a list of references, a client list, and a sample CNA report. However, the CNA Recipient may request any additional information they feel necessary to evaluate potential candidates and select a suitable provider for this service. Consideration for the type of CNA required should be part of the CNA Recipient's selection criteria and inserted into the contract language as well. The necessary skill set to perform the ''as-is'' versus the Post Rehabilitation CNA or a LCCA needs to be considered carefully. Knowledge of the accessibility laws and standards and the ability to read and understand plans and specifications should also be among the critical skill elements to consider.

Attachment A, Contract Addendum must be submitted to RD with the contract and signed by the CNA Recipient and CNA Provider. The proposed agreement with the CNA Recipient and CNA Provider must meet RD's qualification requirements for both the provider and the CNA SOW, as specified in *Attachment B, Capital Needs Assessment Statement of Work.* RD must review the proposed agreement between the CNA Recipient and the CNA Provider, and concur only if all of the RD requirements and conditions are met. (See the previous Section 3 of this UL, *The CNA Review Process.*)

Please note: It is in the CNA Recipient's best interest to furnish the CNA Provider with the most current and up-to-date property information for a more comprehensive and thorough CNA report. RD recommends that the CNA Recipient conduct a pre-inspection meeting with the Owner, Property Manager, maintenance persons familiar with the property, CNA Provider, and Agency Representatives at the site. This meeting will allow a forum to discuss specific details about the property that may not be readily apparent to all parties involved during the review process, as well as making some physical observations on-site. Certain issues that may not be evident to the CNA Provider due to weather conditions at the time of review should also be discussed and included in the report. Additionally, other issues that may need to be addressed include environmental hazards, structural defects, and complex accessibility issues. It is imperative that the Agency be fully aware of the current physical condition of the property at the time the CNA is prepared. An Agency representative must make every effort to attend the CNA Providers on-site inspection of the property unless the Agency has performed a physical inspection of the property within the previous 12 months.

This pre-inspection meeting also allows the CNA Provider to discuss with the CNA Recipient total number of units to be inspected, as well as identifying any specific units that will be inspected in detail. The minimum number of inspected units required by the Agency for an acceptable CNA is 50 percent. However, inspecting a larger number of units generally provides more accurate information to identify the specific line items to be addressed over the ''term'' being covered by the CNA report. CNA Recipients are encouraged to negotiate with the CNA Provider to achieve inspection of all units whenever possible. The ultimate goal for the CNA Recipient and CNA Provider, as well as the Agency, is to produce the most accurate ''baseline or snapshot'' of current physical property conditions for use as a tool in projecting future reserve account needs.

6. Revising an Accepted CNA During Underwriting (Applies to RD Actions)

During transaction underwriting and analysis, presentation of the information contained in the ''accepted'' CNA may need to be revised by RD to address financing and other programmatic issues. The loan underwriter and the CNA Reviewer will work together to determine if revisions are necessary to meet the financial and physical needs of the property, and established RD underwriting or servicing standards and principals. These may involve shifting individual repair line items reported in the CNA, moving work from year to year, or other adjustments that will improve cash flow. The revised underwriting CNA will be used to establish reserve funding schedules as well as operating budget preparation and analysis and will be maintained by RD as supporting documentation for the loan underwriting.

The initial CNA, prepared by the CNA Provider, will be maintained as an independent third- party record of the current condition of the property at the beginning of the 20-year cycle.

Original CNAs will be maintained in the case file, clearly marked as either ''Current Property Condition'' (''As-is''), ''Post Rehabilitation Condition'', or ''Revised Underwriting/Replacement Schedule'', as applicable. *Note:* The CNA Provider is not the appropriate party to ''revise'' a CNA which has already been approved by the CNA Recipient and concurred with by the Agency. The CNA Provider's independent opinion was the basis of

the ''As is'' or ''Post Rehabilitation'' CNA. The CNA developed for underwriting may only be revised by RD staff during the underwriting process or as part of a post-closing servicing action.

7. Updating a CNA (Applies to ''As-Is'' and ''Post-Rehabilitation'' That Have Not Been Accepted by RD)

A completed CNA more than a year old at the time of the RD CNA review and approval must be ''updated' prior to RD approval. Likewise, if at the time of underwriting the CNA is more than a year old (but less than two years old), it must be updated before the transaction can be approved.

To update a CNA, the CNA Provider must review property changes (repairs, improvements, or failures) that have occurred since the date of the original CNA site visit with the CNA Recipient, review costs and quantities, and submit an updated CNA for approval. However, if the site visit for the CNA occurred more than two years prior to the loan underwriting, the CNA Provider should perform a new site visit to verify the current project condition.

Once the CNA has been updated, the CNA Provider will include a statement noting ''This is an updated CNA of the earlier CNA dated _____,'' at the beginning of the CNA's Narrative section. The CNA Provider should reprint the CNA with a new date for the updated CNA, and provide a new electronic copy to the CNA Recipient and RD.

If the CNA age exceeds 2 years at the time of the RD CNA review and approval, the CNA Provider will need to repeat the site visit process to re-evaluate the condition of the property. The original report can remain the basis of the findings.

8. Incorporating a Property's Rehabilitation Into a CNA

A CNA provides a repair schedule for the property in its present condition, indicating repairs and replacements necessary for a property to function properly and efficiently over a span of 20 years. It is not an estimate of existing rehabilitation needs, or an estimate of rehabilitation costs. If any rehabilitation of a MFH development is planned as part of the proposed transaction, a rehabilitation repair list (also called a ''Scope of Work'') must be developed independently based on the CNA repair schedule. This rehabilitation repair list may be developed by the CNA Recipient, a project Architect, or an outside party (such as the CNA Provider, when qualified) hired by the CNA Recipient.

The CNA Recipient must not use repair line-item costs taken from the CNA to develop the rehabilitation cost estimates for the rehabilitation loan, as these costs will not be accurate. The repair costs in a CNA are based on estimated costs for the property. Typically, these costs include the labor, materials, overhead and profit, but do not include applicable ''soft costs''. For example, for CNA purposes, the probable cost is to send a repairman out, remove an appliance, and put a new one in its place. For rehabilitation cost estimates, the CNA Recipient typically intends to hire a general contractor to oversee and supervise the rehabilitation work, which is then considered a ''soft cost''. The cost of rehabilitation includes the costs for that general contractor, the general contractor's requirements, the cost of a project Architect (if one is used), tenant relocation (if needed), and interim financing (if used), which are considered ''soft costs'' attributed to the rehabilitation costs for the project.

If a ''Post Rehabilitation'' CNA is required and authorized by RD, a copy of the rehabilitation repair list or SOW must be provided to the CNA Provider. The CNA Provider will prepare a ''Post Rehabilitation'' CNA indicating what repairs are planned for the property in the coming 20 years based on conditions after the rehabilitation is completed. Items to be replaced during rehabilitation that will need to be replaced again within the 20 years, such as appliances, will be included in the ''Post Rehabilitation'' CNA. Items that will not need replacement during the coming 20 years, such as a new roof, will not need to be calculated in the ''Post Rehabilitation'' CNA. The line item should not be removed from the CNA, but the cost data should be zeroed out. Appropriate comments should be included in the CNA report to acknowledge the SOW or rehabilitation/repairs that were considered.

9. Repair and Replacement Schedule

A CNA is not a formal repair and replacement schedule and cannot be used as an exact replacement schedule. A CNA is an estimate of the anticipated replacement needs for the property over time, and the associated replacement costs. The goal of a CNA is to estimate the replacement times based on the Expected Useful Life (EUL) to assure funds are available to replace equipment as it is needed. Hopefully, materials will be well maintained and last longer than estimated in the CNA. However, the CNA cannot be used to mandate replacement times for the identified building components. The RD underwriter may find it necessary to adjust the proposed replacement schedule during the course of the underwriting to allow for an adequate Annual Deposit to Replacement Reserves (ADRR) payment that will sustain the property over a 20-year period and keep rents below the maximum rents that are allowed.

BILLING CODE 3410–XV–P

Attachment A

ADDENDUM TO THE CAPITAL NEEDS ASSESSMENT CONTRACT

(Between CNA Recipient and CNA Provider)

This ADDUNDUM to the CAPITAL NEEDS ASSESMENT (CNA) CONTRACT between _____ **(CNA Provider)** and **(CAN Recipient)** is entered intothis_____day of__, 20 _____(the Effective Date) for the property known as _____ **(Property)**.

DEFINITIONS

"Acceptance" means the act of an authorized representative of the United States Department of Agriculture (USDA), Rural Development by which the representativeapproves the Agreement and this Addendum.
"Agreement" means the contract entered into between the CNA Recipient and the CNA Provider to provide a CNA of the property. It includes the original document entered intobetween the parties, this Addendum, and any other document incorporated by the Agreement.
"CNA Report" means a report in general conformance with the *Statement of Work* that isattached hereto and the *Fannie Mae Physical Needs Assessment Guidance to the PropertyEvaluator*.
"**CNA Reviewer"** means a person assigned to review the CNA report on behalf ofUSDA, Rural Development program.
"CNA Provider" means the person or entity entering into the Agreement with the CNARecipient to perform all work required to provide a CNA of the property.
"CNA Recipient" means the person or persons who have or will have legal title and/or ownership of a property participating under USDA, Rural Development programs.
"Program" means any MFH program authorized by Section 514 or 515 of the Housing Act of 1949, as amended and administered by USDA, Rural Development.
"Property" means any structure(s), dwelling(s) and/or land that is the subject of any Multi- family Housing program administered by the U.S. Department of Agriculture, Rural Development, and for which a CNA is required by U.S. Department of Agriculture,Rural Development.
"USDA RD" means the United States Department of Agriculture, Rural Development.
"**Work"** means the *CNA Statement of Work* as attached hereto.

RECITALS

WHEREAS, the property known as_____**Property** is included in the program being administered by **USDA RD**.

WHEREAS, as a condition of participating in the program, the CNA Recipient is required to obtain a CNA for the Property, which has been prepared inaccordance with the Statement of Work; CNA Recipient and CNA Provider must agree to a Contract to prepare a CNA for the Property.

WHEREAS, CNA Provider and CNA Recipient are parties to that certain CNA Contract, dated _____, 20_, **Agreement**, pursuant to which the CNA Recipient has retained the services of CNA Provider to provide a CNA for the Property for the base Contract amount of $_____and for itemized "Additional

Services" as follows: (see listing inspection i.e. below,) in the amount of $_____ per item or service. The total Contract amount is $_____.

WHEREAS, the parties hereby wish to incorporate into the **Agreement** andits Exhibits certain additional provisions as set forth below.

NOW, THEREFORE, in consideration of the promises and mutual covenantscontained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following additional terms and conditions as follows:

ADDITIONS TO THE AGREEMENT
(Between CNA Recipient and CNA Provider)

I. CNA RECIPIENT OBLIGATIONS

a. SUBMISSION OF CONTRACT FOR CONCURRENCE BY USDA RD

CNA Recipient will promptly submit to **USDA RD** for review and concurrence a copyof the executed **Agreement** and this Addendum.

b. NOTIFICATION OF CONCURRENCE OF AGREEMENT BY USDARD

Upon receiving notification from USDA RD of its concurrence of the Agreement, CNA Recipient will promptly furnish CNA Provider with evidence of this acceptance.

c. ACCESS TO THE PROPERTY

Owner must allow CNA Provider, CNA Recipient and; if requested, the CNA Reviewer, complete, timely and unconditional access to the Property and its premises for the purpose of conducting the inspections that are required for preparing the CNA.

d. FURNISHING PROPERTY INFORMATION

At least_____(number) day(s) prior to the commencement of the CNA inspection, CNA Recipient must furnish to the CNA Provider all information on any recent and/or immediate planned capital improvements to the Property,any recent and/or scheduled repairs, finalized maintenance schedules, and information on the existence of any known environmental hazards at the property. In addition, Owners must provide any available information on any current "Transition Plan" and "Self -Evaluation" addressing proposals for complying with all applicable Federal accessibility requirements, and other matters relevant to the CNA Statement of Work.

Specific items the CNA Recipient should provide the CNA Provider include:

1. Contact information for the Owner's representative at **USDA RD** (Name,address, telephone number, e-mail address, etc.).
2. Building-by-building breakdown of units by bedroom count and type (i.e.garden, townhouse, fully accessible) to aid in selection of units at time of inspection.
3. Any available plans or blueprints of development (as-built drawingspreferred).
4. Listing of capital expenditures for the Property over the past three to five yearsand maintenance expenditures over the last 12 months.
5. Maintenance logs to help identify any significant or systemic areas of concern.
6. Copies of invoices for any recently completed capital improvements and/orcopies of quotes for any pending/planned capital improvements.
7. A valid/current Section 504 Accessibility Self Evaluation/Transition Plan (nomore than three years old).
8. Any available capital/physical needs assessments (CNAs/PNAs) that werepreviously completed.
9. Any available structural or engineering studies that were previouslycompleted.
10. Any available reports related to lead-based paint testing or other environmental hazards (i.e. asbestos, mold, underground storage tanks, etc.) that were previously completed and/or related certifications if environmentalremediation has been completed.
11. Reports including, but not limited to: local Health Department inspections,soils analysis, USDA's last compliance review, or USDA's last security inspection.
12. If the CNA Recipient certifies below that (a) third-party funds have been committed for use in the transaction for which the CNA is required; and (b)**USDA RD** has communicated its acceptance or acknowledgement of the availability of these funds (whether by an award of points in a portfolio revitalization program or otherwise); and (c) these funds are to be used towards a rehabilitation program at the Property, the CNA Recipient will provide the CNA Provider with a copy of the proposed rehabilitation scopeand budget.

e. ADDITIONAL SERVICES

When a CNA exceeds the one-year duration beyond the original acceptance dateof the document, the report is required to be updated. The Contract should designate anticipated tasks and costs that would be necessary to update the CNAafter the one-year or two-year time frames have been exceeded. The Contract should include, at a minimum:

1. Identify Property where update is required.

2. Itemized list of possible tasks to be performed to accomplish the update:Time and materials

Interviews
Document reviews (photos, construction documents, contracts, etc.).
Additional site visit as required (travel).
3. Associated unit costs for each task required for the CNA Update.

II. CNA RECIPIENT'S CERTIFICATIONS – CNA Recipient hereby certifies asfollows:

a. STATUS OF PROPOSED CNA (check correct box)

☐ CNA Recipient **has** received a **commitment** for third-party funding for the revitalization transaction for which application was made. **The CNAProvider will create the CNA based on existing conditions "as is"**. CNA Recipient is responsible for the Scope of Work and budget for the proposed rehabilitation of the Property (typically obtained from a projectArchitect), incorporating any requirements of the third-party lender. TheCNA Provider will then revise their CNA based on the anticipated conditions "post rehabilitation" of the Property after the rehabilitation. Both CNAs will be provided to Rural Development.

☐ CNA Recipient **has requested or will request** third-party funds but has no commitment. If CNA Recipient does not have a commitment of third-party funds, CNA Reviewer agrees that it is within USDA RD's sole discretion to determine whether the CNA Provider should consider any rehabilitation Scope of Work and budget for a "post rehabilitation" CNA after conducting a CNA based on the Property's "as is" condition. USDARD will make such a determination on the likelihood of third-party funds being made available. CNA Provider should verify this decision with Rural Development prior to performing a "post rehabilitation" CNA.

☐ CNA Recipient does not anticipate third-party funds being utilized, or does not anticipate a rehabilitation at this time. In this case, the CNAProvider will conduct a normal review of the Property, not including/anticipating any rehabilitation, and base the CNA on the existing conditions at the Property.

NOTE: The CNA Recipient will not instruct the CNA Provider to perform a "post rehabilitation" CNA without approval from Rural Development.

b. COMPLIANCE WITH STATEMENT OF WORK

CNA Recipient must allow the CNA Provider to comply with the Statement of Work in creating and developing a CNA report that will incorporate and meet all terms, conditions and requirements as set forth in the attached Statement of Work. CNA Recipient must not impede or attempt to influence the CNA Provider's impartiality inapplying the CNA requirements and guidelines established by Rural Development in describing the physical condition and needs of the Property.

c. AVAILABILITY

CNA Recipient must be available to promptly discuss any draft or preliminary CNAreport with the CNA Provider and must address in writing to the CNA Reviewer anydesired revisions, corrections, comments or concerns the CNA Recipient may have relating to such report.

d. ADDRESSING DEFICIENCIES

CNA Recipient must promptly furnish to the CNA Provider USDA RD's CNA Review report. CNA Recipient will discuss any deficiencies observed by the CNA Reviewer and request that the deficiencies be addressed within five (5) working days. Should deficiencies not be addressed within five (5) working days, CNA Recipient may order the CNA Provider in writing to suspend, delay, or interrupt all or any part ofthe work under the Agreement that remains to be performed for such period of time until deficiencies identified by the CNA Reviewer have been satisfied.

e. PAYMENT

The CNA Recipient must pay the CNA Provider 50 percent of the negotiated contractamount for the base CNA Contract once the Contract for CNA services has been executed. If the CNA Recipient chooses to include and pay for additional services from the CNA Provider exceeding the negotiated base CNA Contract amount, then these services must be listed and the payment method addressed in the Contract between the CNA Recipient and CNA Provider. If funds for additional services will be withdrawn from the reserve account, then 50 percent of the base Contract amount along with the additional services will be paid once the contract for CNA services hasbeen executed.

Upon concurrence by the CNA Reviewer of the CNA Provider's final report (signatureof Reviewer and Underwriter required), the CNA Recipient will promptly satisfy and pay the remaining 50 percent balance of the base Contract amount and additional services if they are paid for out of the reserve account. Any remaining fees and/or dues owed to the CNA Provider pursuant to the terms of the Agreement will also be due upon the CNA Reviewer's concurrence of the CNA Provider's final report. Other payments must be subject to the schedule identified in the Agreement.

III. CNA PROVIDER'S OBLIGATIONS – (applies to "as-is" "updates" and"post rehabilitation")

a. CNA PROVIDER'S RESPONSIBILITY FOR WORK

The CNA Provider must furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work as described in the Statement ofWork, which is attached hereto. The format utilized for this report must be _____. (Write in "USDA RD CNA Template in Microsoft ExcelFormat" or similar electronic format.)

b. COMPLIANCE WITH STATEMENT OF WORK

CNA Provider will comply with the Statement of Work by creating and developing a CNA report that will incorporate and meet all terms, conditions and requirements as setforth in the attached Statement of Work.

c. DELIVERY OF PRELIMINARY CNA REPORT

CNA Provider must promptly provide to the CNA Recipient and USDA RD apreliminary CNA report.

d. AVAILABILITY TO DISCUSS CNA REPORT FINDINGS

CNA Provider must take any reasonable measures to be readily available to discuss and respond to any findings, concerns, comments, or revisions the CNA Reviewer mayhave regarding the preliminary CNA report.

e. SUBMISSION OF FINAL CNA REPORT

After receipt of the CNA Reviewer's report, the CNA Provider must promptly providethe CNA Recipient and USDA RD with a finalized CNA report. The finalized report will incorporate observations, comments and/or changes identified by the CNA Reviewer.

IV. CNA PROVIDER'S CERTIFICATIONS CNA Provider hereby certifies asfollows:

a. LICENSING AND COMPLIANCE

CNA Provider possesses valid and current licenses and certifications necessary to comply with the Statement of Work and as regulated by all applicable State, county,and/or local laws and/or ordinances.

b. CONFLICTS OF INTEREST

CNA Provider has no identity of interest as defined in 7 CFR part 3560 with CNA Recipient or Owner's Property or the management agency/company for the Property.

c. PROPERLY TRAINED

CNA Provider and any Provider personnel who will have actual responsibility for theProperty inspection and preparation of the CNA are properly trained and experienced in evaluating site and building systems, health and safety conditions, physical and structural conditions, environmental and accessibility conditions, and estimating costsfor repairing, replacing and improving site and building components.

d. PROFESSIONALLY EXPERIENCED

CNA Provider and any Provider personnel who will have actual responsibility for the Property inspection and preparation of the CNA are professionally experienced in preparing and providing CNA's for multifamily housing properties that are similar in scope and operation to those typically financed in USDA RD's Multi-Family Housingprogram.

e. KNOWLEDGEABLE OF CODES

CNA Provider and any Provider personnel who will have actual responsibility for theProperty inspection and preparation of the CNA are knowledgeable about applicable site and building standards and codes, including Federal, State and local requirementson environmental and accessibility issues.

f. DEBARMENT AND SUSPENSION

CNA Provider is not debarred or suspended from participating in Federally assisted programs and will comply with the requirements of 7 C.F.R. part 3017 and 2 C.F.R. part 417 or any successor regulation, pertaining to debarment or suspension of a personfrom participating in a Federal program or activity.

g. SIGNED CERTIFICATION

Include a written and signed certification by the CNA Provider that it meets all of the above qualifications for the proposed Agreement with the CNA Recipient for CNA services. [The CNA Provider's execution of this Addendum will constitute its "writtenand signed certification" that it meets these qualifications.]

V. MISCELLANEOUS

a. USDA RURAL DEVELOPMENT PROVISIONS

Upon request of the CNA Provider or CNA Recipient, USDA RD will make availablepertinent project data such as the reserve replacements for the last 2-3 years, budget summary of the last two years, and copies of Physical Inspections and Supervisory Visits for the Property, if available.

b. ASSIGNMENT OF CONTRACT

CNA Provider must not assign or transfer any interest in or performance of this Contract, without written authorization from the CNA Recipient and a USDA RDrepresentative.

c. ENTIRE AGREEMENT

If there are inconsistencies between any provision in this Addendum and any provisionin the Agreement, the provision in this Addendum must govern. No oral statements orrepresentations or prior written matter contradicting this instrument must have any force and effect.

d. GOVERNING LAW

All matters pertaining to this Addendum (including its interpretation, application, validity, performance and breach) in whatever jurisdiction action may be brought, must be governed by, construed and enforced in accordance with the laws of the Stateof_____. (Location of the Property)

e. HEADINGS

This Addendum must be governed by and interpreted as part of the Agreement and itsgeneral terms and conditions.

f. TERMS AND CONDITIONS

Except as expressly stated herein, all other terms and conditions of the Agreementmust remain in full force and effect.

IN WITNESS WHEREOF, the undersigned who are duly authorized to execute andenter into this Addendum, intending to be legally bound hereby, have executed this Addendum as of the date first written above.

Project:

_____

Project Location:

_____

_____	_____
CNA Recipient	CNA Provider
By its:_____	By its: _____
(Title/Position)	(Title/Position)

Concurred by:

The United States Department of Agriculture, Rural Development

_____	_____
Rural Development Representative	Title/Position

Attachment B

CAPITAL NEEDS ASSESSMENT STATEMENT OF WORK

Nature of the Work

A Capital Needs Assessment (CNA) is a systematic assessment to determine a Property's physical capital needs over the next 20 years based upon the observed current physical conditions of a Property. The CNA report provides a year-by-year estimate of capital replacement costs over this 20-year period for use by the CNA Recipient and the U.S. Department of Agriculture (USDA) Rural Development (RD) personnel in planning the reserve account for replacements and other funding to cover these costs.

Note: RD will use the CNA report as a key source of information about expected capital needsat the Property and the timing of these needs. However, the CNA report is only an estimate of these needs and their timing. It should ***not*** *be viewed as the formal schedule for actual replacement of capital items. Replacement of capital items should occur when components reach the end of their actual useful life, which may occur earlier or later than estimated in the CNA report.*

Payment

The CNA Recipient must pay the CNA Provider 50 percent of the negotiated Contract amount for the base CNA Contract amount once the Contract for CNA services has been executed. If the CNA Recipient chooses to include and pay for additional services from the CNA Provider exceeding the negotiated base CNA Contract amount, then these services must be listed and the payment method addressed in the Contract between the CNA Recipient and CNA Provider. If funds for additional services will be withdrawn from the reserve account, then 50 percent of the base Contract amount along with the additional services will be paid once the Contract for CNA services has been executed.

Upon concurrence by the CNA Reviewer of the CNA Provider's final report (signature of Reviewer and Underwriter required), the CNA Recipient will promptly satisfy and pay the remaining 50 percent balance of the base Contract amount and additional services if they arepaid for out of the reserve account. Any remaining fees and/or dues owed to the CNA Provider pursuant to the terms of the Agreement will also be due upon the CNA Reviewer's concurrence of the CNA Provider's final report. Other payments must be subject to the schedule identified in the Agreement.

Qualifications

The CNA Provider must:

1. Possess valid and current licenses and certifications necessary to comply with the Statement of Work and as regulated by all applicable State, county and/or local lawsand/or ordinances.

2. Have no identity of interest as defined in 7 C.F.R. part 3560, with CNA Recipient or owner's Property, or management agent. An architectural firm performing a CNA whichis also involved in the rehabilitation of the Property would be considered an Identity of Interest. For example: the Architect that performs the CNA assessment could overstate the conditions of the Property in order to inflate the rehabilitation scope, resulting in an increase to the Architect's compensation which is typically a percentage of theconstruction costs.

3. Be properly trained and experienced in evaluating site and building systems, health and safety conditions, physical and structural conditions, environmental and accessibility conditions, and estimating costs for repairing, replacing, and improving site and building components. (This applies to the CNA Provider or any Provider personnel who will have actual responsibility for the property inspection and preparation of the CNA.)

4. Be professionally experienced in preparing and providing CNAs for Multi-Family Housing properties that are similar in scope and operation to those typically financed in USDA RD's Section 515 program. (This applies to the CNA Provider or any Provider personnel who will have actual responsibility for the Property inspection and preparationof the CNA.)

5. Be knowledgeable about applicable site and building standards and codes including Federal, State and local requirements on environmental and accessibility issues. (Thisapplies to the CNA Provider or any Provider personnel who will have actual responsibility for the Property inspection and preparation of the CNA.)

6. Not be debarred or suspended from participating in Federally assisted programs and will comply with the requirements of 2 C.F.R. parts 417 and 180 or any successor regulation, pertaining to debarment or suspension of a person from participating in a Federal program or activity.

Statement of Work

The CNA Provider must:

1. Perform a CNA in general conformance with the document: "Fannie Mae PhysicalNeeds Assessment Guidance to the Property Evaluator," except as modified herein.

2. Inspect the property. A minimum of **50 percent** (50 percent if less than 50 units) (45 percent if Property includes 50 – 99 units, 40 percent if the Property contains 100 or more units) of all dwelling units must be inspected in a non-intrusive manner. Consideration must be given to inspecting at least one unit per floor, per building, and per unit type (one-bedroom, two-bedroom, etc.) up to the threshold percentage.

CNA Providers must ultimately be responsible for appropriate unit sampling but are encouraged to consult with site representatives to gather adequate information. This willhelp ensure that unit samples represent a cross-section of unit types and current physical conditions at the Property and are reflective of substantive immediate physical condition concerns.

All site improvements, common facilities (every central mechanical room, every laundry etc.), and building exteriors must be inspected. (ASTM guidelines, allowing for "representative observations" of major elements are not adequate in this regard. Although inspections are "non-intrusive", CNA Providers must include an inspection of crawlspaces and attics (when these spaces can be reasonably and safely accessed) in a number sufficient to formulate an opinion of the condition of those spacesand any work necessary). All units designated as fully accessible for the handicapped must be inspected. The inspection must include interviews with the CNA Recipient, applicant/transferee, management staff, and tenants as needed. It must also include consideration of all relevant Property information provided by the CNA Recipient, including:

- Contact information for the client's representative at Rural Development (Name,address, telephone number, e-mail address, etc.).
- Building-by-building breakdown of units by bedroom count and type (i.e. garden,townhouse, handicap accessible) to aid in selection of units at time of inspection.
- Any available plans or blueprints of development (as-built drawings preferred).
- Listing of capital expenditures for the Property over the past three to five years and maintenance expenditures over the last 12 months.
- Maintenance logs to help identify any significant or systemic areas of concern.
- Copies of invoices for any recently completed capital improvements and/or copies ofquotes for any pending/planned capital improvements.
- A valid/current Section 504 Accessibility Self-Evaluation/Transition Plan (**no morethan three years old**).
- Any available capital/physical needs assessments (CNAs/PNAs) that were previously completed.
- Any available structural or engineering studies that were previously completed.

- Any available reports related to lead-based paint testing or other environmental hazards(i.e. asbestos, mold, underground storage tanks, etc.) that were previously completed and/or related certifications if environmental remediation has been completed.
- Reports including but not limited to: local Health Department inspections, soilsanalysis, USDA's last Civil Rights compliance review, USDA's last security inspection.
- If the CNA Recipient certifies that: (a) third-party funds have been committed for use in the transaction for which the CNA is required; and (b) USDA RD has communicated its acceptance or acknowledgement of the availability of these funds(whether by an award of points in a portfolio revitalization program or otherwise); and (c) these funds are to be used towards a rehabilitation at the Property, the CNARecipient will provide the CNA Provider with a copy of the proposed rehabilitationscope and budget. Attachment J provides more rehabilitation requirements.

3. Prepare a report using forms developed by Rural Development or other similar documents. The report must be on an electronic worksheet in excel format commonlyused in the industry, or as prescribed elsewhere herein. The report must contain the following components, at a minimum:

a. Project Summary. Identification of the CNA Provider and CNA Recipient, and abrief description of the project, including the name, location, occupancy type (family/elderly) and unit mix.

b. Narrative. A detailed narrative description of the Property, including year the property was constructed or rehabilitated (of each phase if work completed in multiple phases), interior and exterior characteristics, conditions, materials and equipment, architectural and structural components, mechanical systems, etc. it must also include:

i. Number, types, and identification of dwelling units inspected and used as a basisfor the findings and conclusions in the report;

ii. An assessment of how the Property meets the requirements for accessibility topersons with disabilities;

a) The report must include any actions and estimated costs necessary to correct deficiencies in order for the Property to comply with applicable Federal, State, and local laws and requirements on Section 504 accessibility. The report must also include an opinion on the adequacy of any existing and approved Transition Plans for the Property in accordance with USDA RD requirements. CNA Providers mustnot assume that a Property built in accordance with accessibility standards prevailing at the time of original construction is "grandfathered" on accessibility requirements.

b) The CNA Provider must include in the final report an accessibility evaluation in accordance with all applicable Federal accessibility requirements and standards. CNA Providers are strongly encouraged to review Appendix 5 to HB-2-3560.

iii. An assessment of observed or potential on-site environmental hazards (e.g.,above or below ground fuel storage tanks, leaking electrical transformers);

Note: The narrative portion of the report must address and include any existing testing results for the presence of radon, lead in water, lead-based paint, and other environmental concerns. CNA Providers are not expected to conduct or commission any testing themselves. However, where test results provided by the CNA Recipient affirmatively point to hazards, the CNA Provider must inquire aboutsubsequent remediation steps and include cost allowances for any identified hazards not yet remediated.

iv. Recommendations for any additional professional reports as deemed necessaryby the CNA Provider, such as additional investigations on potential structural defects or environmental hazards;

Note: The narrative portion of the report must address each study or report necessary; why, and what expertise is needed so that the CNA Recipient can alleviate that issue, including estimates for repairs, prior to underwriting. It is not the CNA Provider's responsibility to estimate the cost of the study or repairs/ remediation necessary.

v. Needs of the Property funded or to be funded from a third-party (if any), such astax credits, including a brief description of the work, the source of funding, the year(s) the work is planned to be completed, and the total estimated costs in current dollars; and:

Note: For projects where the CNA Recipient advises the CNA Provider that third-party funding for rehabilitation is committed and the work will begin within 12 months, the CNA must address the existing conditions at the Property, ***and*** *the "post-rehabilitation" needs at the Property. An example would be a CNA Recipient who has submitted a pre-application to Rural Development for the Multifamily Preservation and Revitalization (MPR) Demonstration Program where Rural Development has awarded points to the application for third-party funding,and it has committed third-party funding. Under the MPR, a CNA Recipient who has applied for third-party funding for rehabilitation but does not have a commitment for this funding must have the CNA prepared based on conditions at the Property "as is," not "post rehabilitation". In these cases, consult with RuralDevelopment as to whether a "post rehabilitation" CNA should be done. When aCNA Recipient receives the funding commitment, and rehabilitation is planned within the next 12 months, the CNA Contract must be renegotiated to indicate thatrehabilitation is planned and specify that a "post rehabilitation" CNA should be prepared.*

In preparing CNAs for these properties, the CNA Provider should undertake the CNA on the basis that the third-party funded rehabilitation will occur as describedin the Scope of Work for the rehabilitation project provided by the CNA Recipient and determine the Property's "post-rehabilitation" capital needs over the next 20 years. In these cases, the CNA Provider is expected to review and understand the Scope of Work for planned rehabilitation funded from third-party sources, but aside from apparent substantive omissions is not required to comment on the planned rehabilitation.

If there is no evidence that third-party funding for rehabilitation has been committed (e.g., if rehabilitation is not indicated in the Rural Development MPR pre-application and/or Rural Development has not awarded points for it), then the CNA Provider must verify with the Rural Development contact prior to performinga "post rehabilitation" CNA. If no funds are committed, and Rural Development does not agree to a "post-rehabilitation" CNA, the CNA Provider may note the CNA Recipients rehabilitation proposal in the CNA but the report must be undertaken as though there will be no immediate rehabilitation. In these cases, theCNA must be based on the CNA Provider's independent professional opinion of current and future needs at the Property. (For example, if the CNA Recipient wishes for a rehabilitation, but has no funds allocated to perform one.)

vi. Acknowledgments (names and addresses of persons who: performed the inspection, prepared the report, and were interviewed during, or as part of theinspection).

c. Materials and Conditions. This component must be reported on a Microsoft Office Excel

© worksheet. The following major system groups must be assessed in the report: Site; Architectural; Mechanical and Electrical; and Dwelling Units. **ALL** materials and systems in the major groups must be assessed (not every specific material used in the construction of the Property), including the following items:

i. Item Description;

ii. Expected Useful Life (EUL). Data entries must be based on the EUL Table included in the "Fannie Mae Physical Needs Assessment Guidance to the PropertyEvaluator", unless otherwise explained in the report based upon the installation or most recent replacement date, quality, warranty, degree of maintenance or any other reasonable and documentable basis. Any EUL entry that varies from the Table must include an explanation in the "Comments" column. Any EUL that varies from the table by 25 percent or more must be adequately supported separately from spreadsheet (for example, provide the documentation or explanation in the Narrative section);

iii. Age. The actual age of the material or system;

iv. Remaining Useful Life (RUL). Any RUL entry that varies from the difference between the EUL and age must be explained in the "Comments" column. Any RUL entry that varies 2 years or more must be adequately supported separately from the spreadsheet (for example, provide the documentation or explanation in the "Narrative" section). Variances of more than 25 percent will not be accepted;

v. Condition. The current physical condition (excellent – good – fair – poor) of thematerial or system;

vi. Description of action needed (repair – replace – maintain construct – none); and,

vii. Comments or field notes that are relevant to the report.

d. Capital Needs. This component must be reported on a Microsoft Office Excel © worksheet. This component identifies all materials and systems for each of the four majorsystem groups to be repaired, replaced, or specially maintained. It must include the following items for such materials or systems:

i. Year or years when action is needed;

ii. Number of years to complete the needed action (duration of the repair work);

iii. Quantity and Unit of Measure. Any data entry that is not from a physical Property measurement or observation during the inspection must be explained in the report (contrary to ASTM guidance, lump sum allowancesmust be used only for capital projects, such as landscaping, that cannot readily be quantified); and,

iv. Estimated repair, replacement, or special maintenance unit cost and total cost in current (un-inflated) dollars for each line item. The report must identify the source(s) used for the cost data. Entries must include estimated costs for materials, labor (union or non-union wages, as appropriate), overhead & profit.

Consultant fees, and other associated costs may be incurred by the CNA Recipient when repair or replacement work involves extensive capital activities (e.g., a major landscaping or site drainage project). These activities are likely to include design costs, or the involvement of general contractors, with associated overhead and profit considerations. If the CNA Provider anticipates work will beaffected by these cost factors, notes should be added to the CNA spread sheet/report to explain the cost logic. Discussions with the CNA Recipient and the Agency will be necessary to confirm the proposed cost of these capital activities. CNA Providers using such standard cost sources must use costallocations that include overhead and profit.

Note: An estimated unit cost that is significantly different from an industry standard cost, such as R.S. Means or equivalent, must be adequately supported.

Generally, replacement actions must involve "in-kind" materials, unless a different material is more appropriate, approved by the State Historic Preservation Office, if applicable, and explained in the report. Exceptions must be made for components that are seen as inadequate (e.g. twenty gallon water heaters, prompting resident complaints) or below contemporary design/ construction standards (e.g. single- glazed windows in temperate climates). Rural Development also encourages the consideration of alternative technology and materials that offer the promise of reduced future capital and/or operating costs (more durable and/or less expensive to maintain over time, reduce utility expenses, etc.). CNA Providers are not expected to conduct quantitative cost-benefit analyses but must use sound professional judgment in this regard.

In addition to the exceptions described in the paragraph above, Rural Development may consider the inclusion of market-comparable amenities/upgrades (e.g. air conditioning in warm climates) proposed by the CNA Recipient when such features are essential to the successful operational and financial performance of the Property. Such items should be identified specifically in the CNA report as "CNA Recipient - recommended upgrades" and include an explanation of why these upgrades are necessary in supporting the financial and operational performance of the Property. Where included, CNA Provider comments on the feasibility and appropriateness of the upgrade are required.

v. The capital needs must be presented in two time frames:

a) Immediate Capital Needs. All critical health and safety deficiencies (e.g.inoperative elevator or central fire alarm system, missing/unsecured railings, blocked/inadequate fire egress, property-wide pest infestation) requiring corrective action in the immediate calendar year. Separately, the CNA Recipient must provide any repairs, replacements, and improvements currently being accomplished in a rehabilitation project, regardless of funding source, and anticipated to be completed within 12 months.

The CNA Recipient will includethe budget for any planned rehabilitation (e.g., rehabilitation proposed in the CNA Recipients pre-application to the MPR). CNA Provider can, but is not required, to offer comments about the rehabilitation budget. The CNA must notinclude minor, inexpensive repairs or replacements that are part of a prudent CNA Recipients operating budget. (If the aggregate cost for a material line item is less than $1,000, then the line item must not be included in the CNA.

An aggregate cost for a line item is an item which needs to be replaced in any given year, the cost exceeds the $1,000, and the item should be replaced in the one-year duration. **Applying a duration that exceeds one-year may decreasethe aggregate amount below the $1,000 threshold, thus circumventing the intent of the threshold to include a particular item in the CNA**.

Where immediate rehabilitation is proposed by the CNA Recipient using third-party funds, the CNA Provider must note the current condition and remaining effective useful lives of affected systems and components in an "as is" CNA.

b) Capital Needs over the Term. Such capital needs include significant maintenance, repairs, and replacement items required during subsequent twentycalendar years to maintain the Property's physical integrity and long term marketability. It must include repairs, replacements, and significant deferred maintenance items currently being planned and anticipated to be completed after the immediate calendar year and corrections for violations of applicable standards on environmental and accessibility issues. It must also include the needs described in paragraph 3.b.v. above in the appropriate year(s), if any, if these will not be completed within 12 months from the closing of the program revitalization transaction. The CNA must **not** include minor, inexpensive repairs or replacements that are part of a prudent Property owner's operating budget. (If the aggregate cost for a material line item is less than $1,000, then the line item must not be included in the CNA. An aggregate cost for a line item is an item which needs to be replaced in any given year, the cost exceeds the $1,000, and the item should be replaced in the one-year duration. Applyinga duration that exceeds one-year may decrease the aggregate amount below the $1,000 threshold, thus circumventing the intent of the threshold to include aparticular item in the CNA.

Exceptions to these exclusions may be appropriate for very small properties, and/or for low cost items that may affect resident health andsafety (e.g., a damaged or misaligned boiler flue). For example, in smallprojects (total of 12 units or less), items exempted would be for materialline items less than $250, not $1,000. The report must be realistic and based on due diligence and consideration of the Property's condition, welfare of the tenants, and logical construction methods and techniques. The estimated unit costs and total costs to remedy the detailed needs must be provided in current (un-inflated) dollars.

Capital Needs over the term must be based on the actual remaining useful lives of the components and systems at hand. Aside from formal work that is accounted for in the "Immediate Capital Needs" section, capital activitiesmust not be "front-loaded."

Note: New components or upgrades addressed in a Property's rehabilitation may have long-term capital needs implications as well. Those items with expected useful lives of less than twenty years (e.g. air conditioners) also will need to be accounted for in Capital Needs over theTerm.

e. Executive Summary. This component must be reported on a MicrosoftOffice Excel © worksheet. It must include:

i. Summary of Immediate Capital Needs – the grand total cost of all majorsystem groups (in current dollars);

ii. Summary of Capital Needs Over the Term – the annual costs and grand totalcost of all major system groups (in current and inflated dollars). The inflation rate must be 3 percent; and,

iii. Summary of All Capital Needs – the grand total costs for the immediate and over the term capital needs (in current and inflated dollars). The grand total costs (in current and inflated dollars) per dwelling unit must also be included.

f. Appendices. This component must include a minimum 25 color digital photographs that describe: the Property's buildings (interior and exterior) and other facilities, specific material or system deficiencies, and the bathrooms and kitchens in the units accessible for the handicapped. Include a Property location map and other documentsas appropriate to describe the Property and support the findings and summaries in the report. The CNA Provider must provide some sort of visual documentation for each line item that cannot be clearly identified by a written description alone. For instance,if an entrance needs to become handicap accessible, a picture of the entrance will helpthe CNA Recipient understand where the construction should take place. The CNA Recipient needs to be able to associate reserve account funds with the correct line items during the life of the CNA during the underwriting process.

4. Deliver the following:

a. A minimum of one electronic copy of the report must be delivered on a compact disk, or other acceptable electronic media, e.g. e-mail, to both the CNA Recipientand USDA RD for their review and written acceptance. To the greatest extent possible, delivery must be made within 15 business days of execution of the Agreement with the CNA Recipient.

b. If the report is not acceptable, the CNA Provider must make the appropriate changesin accordance with the review comments. A minimum of one electronic Excel copyof the revised report must be delivered on a compact disk or via e-mail to both the CNA Recipient and USDA RD for their review and written acceptance. The delivery must be made within 5 business days of receiving the review comments.

c. If the revised report is still not acceptable, additional revisions will be made andelectronic Excel copies delivered on compact disks or via e-mail to the CNA Recipient and USDA RD until the report is acceptable.

5. Be available for consultation with the CNA Recipient or USDA RD after writtenacceptance of the report on any of its contents.

6. The CNA Provider must **NOT** analyze the adequacy of the Property's existing or proposed replacement reserve account nor its deposits as a result of the capital needsdescribed in the report.

Attachment C

FANNIE MAE PHYSICAL NEEDS ASSESSMENT GUIDANCE TO THE PROPERTY EVALUATOR

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1. Transfer of Project Ownership;
2. Loan Reamortization;
3. Loan Write-Down; or
4. Development of an Equity Loan Incentive or Equity Loan for a Sale to a Non-Profit Sponsor.
5. Facility Rehabilitation, including MPR
6. New Construction

Introduction

While many factors affect the soundness of a mortgage loan over time, one of the most significant is the physical condition of the Property – past, present and future. A prudent lender must be concerned with the past maintenance and improvements because they may indicate owner and management practices as well as expenses to be incurred in the future. The lender must be concerned with the condition of the Property at the time the loan is made, and over the term of the loan, because Property conditions may directly impact marketability to prospective tenants and the need for major expenditures may impact the economic soundness and value of the Property. The lender must also be concerned with the condition of the Property at the end of the loan term. If the Property has deteriorated, the owner may not be able to secure sufficient financing to pay off the loan at maturity.

Most lenders have always given some attention to physical conditions and needs of properties in their underwriting. However, the amount of attention, the data secured, the quality and analysisof that data, and the impact of this information on underwriting has varied widely. Indeed, many properties and the loans that they secure are now in trouble because of inadequate consideration of physical needs in the underwriting coupled with inadequate attention to Property maintenance which has diminished the marketability and overall value of the Property.

The guidance and forms in this package, together with the guidance provided to our lenders in our Delegated Underwriting and Servicing (DUS) and Multifamily Guides, is based upon a desire to see a more standardized approach to assessing the physical needs of properties that will be securing our loans. These documents attempt to respond to stated desires on the part of our lenders for a "level playing field" among competing lenders who may otherwise have different notions of the level of data and analysis required to assess a Property's physical condition. They also attempt to respond to the needs of Property evaluators who, desiring to produce the quantity and quality of information deemed necessary, need specific guidance to avoid the appearance of glossing over problems or providing material which is too detailed or complex to be usable by the underwriters.

These documents are meant to provide useful guidance and tools to the evaluators. They cannot cover all situations and are not meant to be inflexible. They are designed to elicit the judgment of the evaluator (in a format which is useful to the underwriter), not to substitute for it. We welcome comments from evaluators in the field offices, as we did in developing this package, on improving either our forms or guidance so that this package can best serve the needs of both the evaluators and our lenders. If you have such comments, please contact:

April LeClair
Director of Multifamily Product Management
3900 Wisconsin Avenue, N.W.
Washington, D.C. 20016
(202) 752-7439.

Attachment C

Specific Guidance to the Property Evaluator

The purpose of the Physical Needs Assessment is to identify and provide cost estimates for the following key items:

- Immediate Physical Needs - repairs, replacements and significant maintenance itemswhich should be done immediately.
- Physical Needs Over the Term - repairs, replacements and significant maintenance items which will be needed over the term of the mortgage and two years beyond.

As part of the process, instances of deferred maintenance are also identified.

The assessment is based on the evaluator's judgment of the actual condition of the improvements and the expected useful life of those improvements. It is understood that the conclusions presented are based upon the evaluator's professional judgment and that the actualperformance of individual components may vary from a reasonably expected standard and willbe affected by circumstances which occur after the date of the evaluation.

This package explains how to use the set of forms provided by Fannie Mae. It is important to recognize that the forms are intended to help the evaluator conduct a comprehensive and accurate assessment. They also present the results of that assessment in a relatively standard format which will be useful to the lender in making underwriting decisions. However, the formsshould not constrain the evaluator from fully presenting his or her concerns and findings. The forms should be used and supplemented in ways which facilitate the preparation and presentation of information useful to the lender regarding the physical needs of the Property.

The Systems and Conditions forms may be altered and/or computerized to serve the evaluators' needs so long as information is provided on the condition and Effective Remaining Life (ERL) of all components and the ERL is compared to the standard Expected Useful Life (EUL). The Summary forms may also be extended or computerized so long as the basic format is maintained.

Attachment C

Terms of Reference Form

The lender completes this form for the evaluator. It serves as a reference point for the assessment and provides the evaluator with basic information about the property and the term ofthe loan. Four additional topics are covered:

- *Sampling Expectations* - The lender's expectations about the number and/or percentage of dwelling units, buildings and specialized systems to evaluate may be stated. If there is no stated expectation, the evaluator should inspect sufficient units, buildings, and numbers of specialized systems to state *with confidence* the present and probable future condition of each system at the Property. The evaluator should provide a separate statement indicating the sampling systems used to ensure a determination of conditions and costs with acceptable accuracy. If a sampling Expectation is provided by the lender which is not adequate to achieve the requisite level of confidence, the evaluator should soadvise the lender.

Considerations in determining an adequate sample size are age and number of buildings (especially if the Property was developed in phases), total number of units, and variations in size, type and occupancy of units. Effective sampling is based on observing a sufficient numberof each significant category. Using the above criteria, categories could include *buildings by ageof each building* (e.g. inspect buildings in the 8-year old phase and in the 11-year old phase), *buildings by type* (e.g. rowhouse, L-shaped rowhouse, walkup, elevator) and/or *buildings by construction materials* (e.g. inspect the garden/flat roof/brick walls section and the garden/pitched roof/clapboard walls section). Dwelling units are separate categories from buildings. At a minimum, sampling is by unit size (0/1/2/3/4 bedrooms). There may be further categories if units are differently configured or equipped, or have different occupants (especially family or elderly). Generally, we would expect the percentage of units inspected to decrease as the total number of units increases. Systems which are not unit specific, such as boilers, compactors, elevators and roofs, will often have a 100 percent sample.

The overriding objective: SEE ENOUGH OF EACH UNIT TYPE AND SYSTEMTO BE ABLE TO STATE WITH CONFIDENCE THE PRESENT AND PROBABLE FUTURE CONDITON.

- *Market Issues* - In certain instances, market conditions may necessitate action on certain systems. Examples are early appliance replacement or re-carpeting, new entry paving, special plantings, and redecorated lobbies. If the owner or lender has identified such anaction, the evaluator should include a cost estimation for such action and indicate what, if any, other costs would be eliminated by such action.

- *Work In Progress* - In some instances, work may be underway (which can be observed) or under contract. When known by the lender, this will be noted. For purposes of the report, such work should be assumed to be complete, unless observed to be unacceptable in quality or scope.
- *Management-Reported Replacements* - In some instances, the Property ownership or management will provide the lender with information about prior repairs or replacements which have been completed in recent years. The lender may provide this information to the evaluator to assist in the assessment of these components. The evaluator should include enough units, buildings, or systems in the sample to reasonably verify thereported repairs or replacements.

Systems and Conditions Forms

It is the responsibility of the evaluator to assess the condition of every system which is presentat a Property. All conditions, except as noted below, requiring action during the life of the loanmust be addressed regardless of whether the action anticipated is a capital or operating expense.

To assist evaluators in reviewing all systems at a Property, four Systems and Conditions Forms are provided. Each lists a group of systems typically related by trade and/or location. The four forms are Site, Architectural, Mechanical and Electrical, and Dwelling Units. While the forms have several columns in which information may be recorded, *in many instances only the first three columns will be completed.* If the condition of a system is acceptable, the ERL exceeds the term of the mortgage by two years, and no action is required, no other columns need to be completed.

The report is not expected to identify minor, inexpensive repairs or other maintenance items which are clearly part of the Property owner's current operating pattern and budget so long as these items appear to be taken care of on a regular basis. Examples of such minor operating items are occasional window glazing replacement and/or caulking, modest plumbing repairs, and annual boiler servicing. However, the evaluator *should* comment on such items in the report if they do not appear to be routinely addressed or are in need of immediate repair.

The report is expected to address infrequently occurring "big ticket" maintenance items, suchas exterior painting, all deferred maintenance of any kind, and repairs or replacements which normally involve significant expense or outside contracting. While the evaluator should noteany environmental hazards seen in the course of the inspection, environment-related actions, such as removal of lead-based paint, will be addressed in a separate report prepared by an environmental consultant.

Using the Systems and Conditions Forms

Purpose

The forms can be used both to record actual observations at a specific location and for an overall summary. For example, the Architectural form can be used for a specific building (orgroup or identical buildings) as well as for summarizing all information for buildings at a Property. The same is true for the Dwelling Unit form. An unlabeled form is included which can be used as a second page for any of the Systems and Conditions Forms.

In some instances, the evaluator will note components which, while they may continue to be functional, may reduce marketability of the Property. For example, single-door refrigerators or appliances in outmoded colors may have such an impact in some properties. The evaluator should note these items, discuss them with the lender, and provide separate estimates of the cost to replace such items if requested.

Items EUL

Each of the four forms has a number of frequently-occurring systems and components listed.This list represents only the most frequently observed and is not meant to be all inclusive.

Every system present at the Property must be observed and recorded. Any system not listed on the form may be included in the spaces labeled "Other". Note that the assessment includes the systems and components in both residential and non-residential structures. Thus, garages, community buildings, management and maintenance offices, cabanas, pools, commercial space, and other non-residential buildings and areas are included.

The EUL figure which appears in parentheses after the "Item" is taken from the "Expected Useful Life Table" provided. This table provides standard useful lives of many components typically found in apartment complexes. Where the parentheses do not contain a number, it is because there are various types of similar components with differing economic lives. The evaluator should turn to the "Expected Useful Life Table" and select, and insert, the appropriate EUL number. If the EUL will; without question, far exceed the term of the mortgage plus two years, the EUL number need not be inserted.

Note: It is recognized that the "Expected Useful Life Table" represents only one possible judgment of the expected life of the various components. If we receive substantial material to the effect that one or more of the estimates are inappropriate, we will make adjustments. Until such changes are made, the Tables provide a useful and consistent standard for all evaluators touse. They avoid debate on what the appropriate expected life is and permit focus on the evaluator's judgment of the effective remaining life of the actual component in place, as discussed below.

Age

The evaluator should insert the actual Age of the component or may insert "OR" for original. If the actual age is unknown, an estimate is acceptable. If there is a range in Age (for example, components replaced over time), the evaluator may note the range (i.e., 5-7 years) or may use several lines for the same system, putting a different Age of that system on each line.

Condition

This space is provided to indicate the Condition of the component, generally excellent, good,fair, or poor, or a similar and *consistent* qualitative evaluation.

Effective Remaining Life

This space is provided for the evaluator to indicate the remaining life of the component as is.For standard components with standard maintenance, the "Expected Useful Life Table" provided by the lender could be used to determine ERL by deducting the Age from EUL. However, this should not be done automatically. A component with unusually good originalquality or exceptional maintenance could have a longer life. On the other hand, if the component has been poorly maintained or was of below standard original quality, the useful lifecould be shorter than expected. *The evaluator applies his or her professional judgment in making a determination of the* ERL.

If the ERL *is longer than the term of the loan plus two years, no deferred maintenance exists, and no action needs to be taken during the life of the loan, no other columns need to be filled out.* The only exception may be Diff? (Difference), as discussed below. This should be notedwhen the evaluator's estimate of the ERL varies by more than two years from the standard estimate.

Diff? (Difference)

The Age of the component should be deducted from the EUL in parentheses and the answer compared to the ERL estimated by the evaluator. Where there is a difference of over two years, the evaluator should insert a footnote number in the DIFF? (Difference) column and supply, in an attached list of footnotes, a brief statement of why, in his or her judgment, the ERL of the component varies from the standard estimate. This approach provides consistency among evaluators while making best of the evaluators' professional judgment.

Action

If any Action is required - immediately, over the life of the loan or within two years thereafter - the Action should be recorded as repair, replacer or maintain. Repair is used when only a part of an item requires action, such as the hydraulics and/or controls of a compactor. Replace is used when the entire item is replaced. Maintain is us where special, non0routine maintenance is required, such as the sandblasting of a swimming pool. In cases where a repair or maintenance may be needed now, and replacement or further maintenance may be needed later, separate lines may be used to identify the separate actions and timing.

Now?

If the item involves a threat to the immediate health and safety of the residents, clearly affects curb appeal, will result in more serious problems if not corrected, or should otherwise be accomplished as part of an immediate repair, maintenance or replacement program, this space should be checked. Replacements which may be needed in year one, but do not require immediate attention, need not be checked.

Deferred Maintenance (DM)

The DM space is marked in any instances where current management practice is clearly inadequate and the owner's attention should be called to the item, even if no major expenditureor significant labor may be required.

Quantity

For items requiring action, the evaluator should note the "Quantity" of the system, with the applicable unit of measure entered (each, unit, square feet, square yards, linear feet, lump sum, etc.).

Field Notes

This space, as well as attachments may be used to record the type of component (16cf, fros. free, Hotpoint), the problem (valves leaking) or other information (consider replacement for marketing purposes, replace 30 percent per year, work in progress, etc.) that the evaluator will need to complete the "Evaluator's Summary".

Sample Form

The following example from the Dwelling Unit Systems and Conditions form illustrates howthis form is properly used. The example presumes an 11 story building containing 1 and 2 bedroom units. There are 100 units. The age of the building is 9 years. The term of the proposed loan is 7 years.

ITEM (EUL)	AGE	COND	ERL	DIFF?	ACTION	NOW?	DM?	QUANTITY	NOTES
Countertop/ Sinks (10)	9	EX	10+	1	-	-	-	- ea.	Corian Stainless Steel
Refrigerator (15)	9	Good	6	-	REPL	-	-	100ea	Hot point 16cf. ff 20%/yr @ YR 5
Disposal (5)	0-9	Good	0-5	-	REPL	-		100ea	20%/yr. @ YR 1 OPTE
Bath Fixtures (20)	9	Good	11+	-	-	-	-	-	Dated Looking Repair - Now
Ceiling 04 Stack ( )	9	Hater Damage	-	-	Repair	Yes	-	10ea	Plumbing Leak

Countertop/Sinks are 9 years old. (The entry could also be "OR"). Condition isexcellent, with an ERL of 10 years. This is significantly different from the anticipated ERL of 1 (a EUL of 10 years minus an Age of 9 years). Therefore, there is a footnote entry "1" in the Diff? (Difference) column. The footnote willindicate that this item is made of an exceptionally durable material (Corian), along with a top quality stainless steel sink. The evaluator's estimate of an ERLof 10 years + is beyond the term of +2. No capital need would be reported.

Refrigerators are also original, reported as 16 cf frost free Hotpoint. Replacementis expected around the ERL, noted as 20 percent annually and beginning in the fifth year of the loan when the refrigerators are 14 years old.

Disposals range from new to original (Age = 0-9). Twenty percent per year replacements will be needed starting in year 1. The evaluator notes that disposalsappear to be replaced as part of the project's normal operations.

Bath fixtures are original, and in good condition. No replacement is expected to be required during the term +2 years. The Notes indicates that they are "datedlooking," which may prompt a market consideration for replacement.

Ceiling is a special entry. The "04" stack of units has experienced water damage to ceiling from major plumbing leak. This is noted for repair NOW. As this apparently occurs in all 10 units in this stack and; therefore, is likely to have morethan a modest cost, this action would be reported on the Immediate Physical Needssummary form.

Evaluator's Summary Forms

Two separate forms are used to summarize the evaluator's conclusions from the Systems and Conditions Forms. One summarizes Immediate Physical Needs and the other summarizes the Physical Needs Over the Term +2 years.

Evaluator's Summary: Immediate Physical Needs

All of the items for which NOW? is checked are transferred to this form. This form provides for the listing of Items, Quantity, Unit Cost and Total Cost of each. The Item and Quantity are transferred directly from the Systems and Conditions form.

Unit Cost - This is the cost per unit (sf, ea, lf, etc.) in current dollars to implement the required action. The source of the cost estimate should be listed in a separate attachment. The sources may include a third-party estimation service (e.g., R.S. Means: *Repair and Remodeling Cost Data*), actual bid or Contract prices for the property, estimates from contractors or vendors, the evaluator's own cost files, or published supplier sources.

Total Cost - This is the result of multiplying the quantity times the unit cost. It is expressed in current year dollars.

Deferred Maintenance (DM) - If the item evidence deferred maintenance, this column is checked.

Comments - the comments column, or an attachment, should clearly provide information on the location and the nature of problem being addressed for each item. The information should be adequate for the owner to begin to implement the action.

Evaluator's Summary: Physical Needs Over the Term

Those items not listed on the Immediate Physical Needs form, but for which action is anticipated during the term of the loan plus two years, are listed on the form. The item and Quantity are transferred directly from the Systems and Conditions form. The Unit Cost is calculated in the same manner as on the Immediate Physical Needs form. An attachment should be provided which gives any necessary information on the location of action items andthe problem being addressed for each item. The information should be adequate for the ownerto begin to implement the action.

Cost by Year - the result of multiplying the quantity times the unit cost, in current dollars, is inserted in the column for the year in which the action is expected to take place. Generally, the ERL estimate provided by the evaluator on the Systems and Conditions will indicate the Action year. For example, if the evaluator has indicated that the ERL of the parking lot paving is 4 years, the cost, in current dollars, is inserted in Year 4. If the items are likely to be done over a number of years, the costs, in current dollars should be spread over the appropriate period. For example, if the ERL of the refrigerators is estimated to be 4 years, or 3-5 years, one third of the cost of replacing the refrigerators may appear in each of years 3, 4, and 5.

Total Uninflated - After inserting all of the appropriate action items, the evaluator should totalthe items for each year.

Total Inflated - The evaluator should multiply the Total Uninflated times the factor provided to produce the Total Inflated.

Total Inflated All Pages - On the last sheet, the evaluator should include the Total InflatedDollars for that page and all prior pages.

Cumulative Total All Pages - On the last sheet, the evaluator should insert the Total Inflated Dollars of that year and all prior years.

Special Repair and Replacement Requirements

While performing a Property Inspection, the evaluator must be aware that certain building materials and construction practices may cause properties to experience (or to develop in a short time period) problems that can be corrected only with major repairs or replacements. The following identifies some specific construction related problems; however, the evaluator must be aware that other construction related problems may be found in any Property and should be identified. If any of the following requirements are not met or if the evaluator determines that the following conditions (or others) are present, *the evaluator must contact the lender immediately to discuss the timing as well as the cost of the repairs or replacements.* The evaluator should ensure that any of these conditions are thoroughly addressed in the Physical Needs Assessment.

Minimum Electrical Capacity - Each apartment unit must have sufficient electrical capacity (amperage) to handle the number of electrical circuits and their use within an apartment. Therefore, the evaluator must determine, based on referencing the National Electric Code as well as local building codes, what is the minimum electrical service needed. In any event, thatservice must not be less than 60 amperes.

Electrical Circuit Overload Protection - All apartment unit circuits, as well as electrical circuits elsewhere in an apartment complex, must have circuit breakers as opposed to fuses ascircuit overload protection.

Aluminum Wiring - In all cases, where aluminum wiring runs from the panel to the outlets of a unit, the evaluator's inspection should ascertain that the aluminum wiring connections (outlets, switches, appliances, etc.) are made to receptacles rated to accept aluminum wiring or that corrective repairs can be done immediately by the owner.

Fire Retardant Treated Plywood - While performing the roof inspection, the evaluator should investigate whether there is any indication that fire-retardant treated plywood was used in the construction of the roof (primarily roof sheathing). This inspection should focus on sections of the roof that are subjected to the greatest amount of heat (e.g., areas that are not shaded or that are poorly ventilated) and; if possible, to inspect the attic for signs of deteriorating fire- retardant treated plywood or plywood that is stamped with a fire rating.

Our concern is that certain types of fire-retardant treated plywood rapidly deteriorates when exposed to excessive heat and humidity or may cause nails or other metal fasteners to corrode. Common signs of this condition include a darkening of the wood and the presence of a powder-like substance, warping of the roof and the curling of the shingles. Fire-retardant treated plywood is most likely to be in townhouse properties or other properties with pitched, shingled roofs that were constructed after 1981 and that are located in States east of the Mississippi River and some southwestern States.

Attachment C

Narrative Conclusion and Attachments

A complete narrative summary of the Property and its components is not required. However, the evaluator should supply a concise summary of the conclusions reached concerning the overall condition of the Property, its future prospects, and the quality of the current maintenance programs. *Any items affecting the health and safety of residents should be clearlyflagged.*

The summary should include a discussion of the sampling approach used, discussed above, and any market issues which the evaluator believes it may be appropriate to address or which were noted by the lender.

The narrative, the forms use and the attachments (footnotes explaining Differences, information regarding sources of costs, and, if necessary, information needed to identify the location and type of problem addressed in the Evaluator's Summary: Physical Needs Over the Term) shouldbe supplied.

Attachment D

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
3					**System Description and Observations**			
	3.1				**Overall General Description**			
	3.2				**Site Systems**			Need Category
		3.2.1			**Topography**			
		3.2.2			**Storm Water Drainage**			Need Item
			3.2.2.1		Catch basins, inlets, culverts	50	50	All items not color coded
			3.2.2.2		Marine or stormwater bulkhead	35	35	are "Component Type"
			3.2.2.3		Earthwork, swales, drainways, erosion controls	50	50	names.
			3.2.2.4		Storm drain lines	50	50	
			3.2.2.5		Stormwater mgmt ponds	50	50	
			3.2.2.6		Fountains, pond aerators	15	15	
		3.2.3			**Access and Egress**			Need Item
			3.2.3.1		Security gate - lift arm	10	10	
			3.2.3.2		Security gate - rolling gate	15	15	
		3.2.4			**Paving, Curbing and Parking**			Need Item
			3.2.4.1		Asphalt Pavement	25	25	
			3.2.4.2		Asphalt Seal Coat	5	5	
			3.2.4.3		Concrete Pavement	50	50	
			3.2.4.4		Curbing, Asphalt	25	25	
			3.2.4.5		Curbing, Concrete	50	50	
			3.2.4.6		Parking, Gravel Surfaced	15	15	
			3.2.4.7		Permeable Paving Systems (brick, concrete pavers)	30	30	
			3.2.4.8		Striping and Marking	15	15	
			3.2.4.9		Signage, Roadway / Parking	15	15	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			3.2.4.10		Carports, wood frame	30	30	
			3.2.4.11		Carports, metal frame	40	40	
		3.2.5			**Flatwork (walks, plazas, terraces, patios)**			Need Item
			3.2.5.1		Asphalt	25	25	
			3.2.5.2		Concrete	50	50	
			3.2.5.3		Gravel	15	15	
			3.2.5.4		Permeable Paving (brick, concrete pavers)	30	30	
		3.2.6			**Landscaping and Appurtenances**			Need Item
			3.2.6.1		Fencing, chain-link	40	40	
			3.2.6.2		Fencing, wood picket	15	20	
			3.2.6.3		Fencing, wood board (=>1"x 6")	20	25	
			3.2.6.4		Fencing, wrought Iron	60	60	
			3.2.6.5		Fencing, steel or aluminum	20	25	
			3.2.6.6		Fencing, concrete Masonry unit (CMU)	30	30	
			3.2.6.7		Fencing, PVC	15	20	
			3.2.6.8		Signage, Entrance/Monument	25	25	
			3.2.6.9		Mail Kiosk	15	20	
			3.2.6.10		Retaining Walls, heavy block (50-80 lb)	60	60	
			3.2.6.11		Retaining Walls, reinforced concrete masonry unit (CMU)	40	40	
			3.2.6.12		Retaining Walls, treated timber	25	25	
			3.2.6.13		Storage sheds	30	30	
		3.2.7			**Recreational Facilities**			Need Item
			3.2.7.1		Sport Court- asphalt	25	25	
			3.2.7.2		Sport Court- synthetic	15	20	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			3.2.7.3		Sport Court-hardwood	50	50	
			3.2.7.4		Tot Lot (playground equipment)	10	15	
			3.2.7.5		Tot Lot- lose ground cover	3	5	
			3.2.7.6		Pool Deck	15	15	
			3.2.7.7		Pool/Spa Plastic Liner	8	8	
			3.2.7.8		Pool/Spa pumps and equipment	10	10	
			3.2.7.9		Decks-treated lumber	20	20	
			3.2.7.10		Decks-composite	50	50	
		3.2.8			**Site Utilities**			
			3.2.8.1		**Site Utilities-Water**			Need Item
				3.2.8.1.1	Water Mains/Valves	50	50	
				3.2.8.1.2	Water Tower	50	50	
				3.2.8.1.3	Irrigation System	25	25	
			3.2.8.2		**Site Utilities-Electric**			Need Item
				3.2.8.2.1	Electric distribution center	40	40	
				3.2.8.2.2	Electric distribution lines	40	40	
				3.2.8.2.3	Transformer	30	30	
				3.2.8.2.4	Emergency Generator	25	25	
				3.2.8.2.5	Solar Photovoltaic panels	15	15	
				3.2.8.2.6	Photovoltaic Inverters	10	10	
				3.2.8.2.7	Pole mounted lights	25	25	
				3.2.8.2.8	Ground lighting	10	10	
				3.2.8.2.9	Building Mounted Lighting	10	10	
				3.2.8.2.10	Building Mounted High Intensity Discharge (HID) Lighting	10	20	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			3.2.8.3		**Site Utilities-Gas**			Need Item
				3.2.8.3.1	Gas Main	40	40	
				3.2.8.3.2	Gas Supply Lines	40	40	
				3.2.8.3.3	Site Propane, Storage & Distribution	35	35	
				3.2.8.3.4	Gas lights/fire pits	20	20	
			3.2.8.4		**Site Utilities-Sewer**			Need Item
				3.2.8.4.1	Sanitary Sewer lines	50	50	
				3.2.8.4.2	Sanitary waste treatment system	40	40	
				3.2.8.4.3	Lift Station	50	50	
			3.2.8.5		**Site Utilities-Trash**			Need Item
				3.2.8.5.1	Dumpsters	15	15	
				3.2.8.5.2	Compactors (exterior, commercial grade)	20	20	
				3.2.8.5.3	Recycling containers/equipment	15	15	
				3.2.8.5.4	Composting, organic recycling equipment	10	10	
	3.3				**Building Frame & Envelope**			Need Category
		3.3.1			**Foundation**			Need Item
			3.3.1.1		Slab, reinforced concrete	100	100	
			3.3.1.2		Slab, post tensioned	100	100	
			3.3.1.3		Continuous reinforced concrete footer and CMU stem wall	100	100	
			3.3.1.4		Piers, reinforced concrete footer and CMU pier	100	100	
			3.3.1.5		Piers, treated timber post/pole	40	40	
			3.3.1.6		Foundation Waterproofing	40	40	
			3.3.1.7		Foundation suction, drainage, groundwater, radon gas controls, pumps, sumps, equip. failure alarms	10	10	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
		3.3.2			**Building Frame**			
			3.3.2.1		**Framing System, Floors & Walls**			Need Item
				3.3.2.1.1	Wood, timbers, dimensioned lumber, laminated beams, trusses	100	100	
				3.3.2.1.2	Tie downs, clips, braces, straps, hangers, shear walls/panels	75	75	
				3.3.2.1.3	Steel, beams, trusses	100	100	
				3.3.2.1.4	Reinforced concrete	100	100	
				3.3.2.1.5	Reinforced masonry, concrete masonry units (CMUs)	100	100	
				3.3.2.1.6	Solid Masonry (obsolete)	100	100	
			3.3.2.2		**Crawl Spaces, Envelope Penetrations**			Need Item
				3.3.2.2.1	Sealed crawl space system	40	40	
				3.3.2.2.2	Vents, screens, covers	30	30	
				3.3.2.2.3	Vapor Barrier (VDR) ground or underfloor	30	30	
				3.3.2.2.4	Penetrations, caulking/sealing	15	15	
				3.3.2.2.5	Crawl space, (de)pressurization, fans, pumps, sumps, equipment failure alarms	10	10	
			3.3.2.3		**Roof Frame & Sheathing**			Need Item
				3.3.2.3.1	Wood frame and board or plywood sheathing	75	75	
				3.3.2.3.2	Tie downs, clips, braces, straps, hangers	75	75	
				3.3.2.3.3	Steel frame and sheet metal or insulated panel sheathing	100	100	
				3.3.2.3.4	Reinforced concrete deck	100	100	
			3.3.2.4		**Flashing & Moisture Protection**			Need Item
				3.3.2.4.1	Caulking and Sealing	15	15	
				3.3.2.4.2	Concrete/Masonry Sealants	10	10	
				3.3.2.4.3	Wood waterproofing and sealants	10	10	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.3.2.4.4	Building wraps & moisture resistant barriers	50	50	
				3.3.2.4.5	Paints and stains, exterior	8	8	
			3.3.2.5		**Attics & Eaves**			Need Item
				3.3.2.5.1	Screened gable end or soffit Vents	30	30	
				3.3.2.5.2	Roof vents, passive	40	40	
				3.3.2.5.3	Roof Vents, powered	20	20	
			3.2.2.6		**Insulation**			Need Item
				3.3.2.6.1	Loose fill, fiber glass, cellulose, mineral wool	50	50	
				3.3.2.6.2	Batts, blankets, rolls, fiber glass or mineral wool	60	60	
				3.3.2.6.3	Rigid foam board	60	60	
				3.3.2.6.4	Sprayed foam	60	60	
			3.3.2.7		**Exterior Stairs, Rails, Balconies/Porches, Canopies**			Need Item
				3.3.2.7.1	Exterior Stairs, wood frame/stringer	30	30	
				3.3.2.7.2	Exterior Stair Tread-wood	15	15	
				3.3.2.7.3	Exterior Stairs-steel frame/stringer	40	40	
				3.3.2.7.4	Exterior Stair Tread-metal, concrete filled	20	20	
				3.3.2.7.5	Exterior Stairs, Concrete	50	50	
				3.3.2.7.6	Fire escapes, metal	50	50	
				3.3.2.7.7	Balcony/Porch, wood frame	25	25	
				3.3.2.7.8	Balcony/Porch, steel frame or concrete	40	40	
				3.3.2.7.9	Balcony/Porch, wood decking	20	20	
				3.3.2.7.10	Balcony/Porch, composite decking	50	50	
				3.3.2.7.11	Railings, wood	20	20	
				3.3.2.7.12	Railings, metal	50	50	

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.3.2.7.13	Railings, composite	50	50	
				3.3.2.7.14	Canopy, Concrete	50	50	
				3.3.2.7.15	Canopy, Wood/Metal	40	40	
			3.3.2.8		**Exterior Doors & Entry Systems**			Need Item
				3.3.2.8.1	Unit Entry Door, Exterior, solid wood/metal clad	25	30	
				3.3.2.8.2	Common Exterior Door, aluminum and glass	30	30	
				3.3.2.8.3	Common Exterior Door, solid wood /metal clad	25	25	
				3.3.2.8.4	Storm/Screen Doors	5	10	
				3.3.2.8.5	Sliding Glass Doors	25	30	
				3.3.2.8.6	French or Atrium Doors, wood/metal clad	25	30	
				3.3.2.8.7	Automatic Entry Doors	30	30	
				3.3.2.8.8	Commercial Entry Systems	50	50	
				3.3.2.8.9	Overhead Door	30	30	
				3.3.2.8.10	Automatic Opener, overhead door	20	20	
		3.3.3			**Façades or Curtainwall**			
			3.3.3.1		**Sidewall System**			Need Item
				3.3.3.1.1	Aluminum Siding	40	40	
				3.3.3.1.2	Vinyl Siding	25	25	
				3.3.3.1.3	Cement Board Siding	45	45	
				3.3.3.1.4	Plywood/Laminated Panels	20	20	
				3.3.3.1.5	Exterior Insulation Finishing System (EIFS)	30	30	
				3.3.3.1.6	Stucco, over wire mesh/lath	50	50	
				3.3.3.1.7	Metal/Glass Curtain Wall	40	40	
				3.3.3.1.8	Precast Concrete Panel (tilt-up)	60	60	

CNA e-Tool Estimated Useful Life Table

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	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.3.3.1.9	Brick/block veneer	60	60	
				3.3.3.1.10	Stone Veneer	50	50	
				3.3.3.1.11	Glass Block	50	50	
				3.3.3.1.12	Cedar/Redwood shakes, clapboard	50	50	
				3.3.3.1.13	Pine board, clapboard	50	50	
			3.3.3.2		**Windows**			Need Item
				3.3.3.2.1	Wood, (dbl, sgl hung, casement, awning, sliders)	35	45	
				3.3.3.2.2	Wood, fixed pane, picture	40	45	
				3.3.3.2.3	Aluminum	35	40	
				3.3.3.2.4	Vinyl	30	30	
				3.3.3.2.5	Vinyl/Alum Clad Wood	50	50	
				3.3.3.2.6	Storm/Screen Windows	7	15	
		3.3.4			**Roofing and Roof Drainage**			
			3.3.4.1		**Sloped Roofs**			Need Item
				3.3.4.1.1	Asphalt Shingle	20	20	
				3.3.4.1.2	Metal	50	50	
				3.3.4.1.3	Slate shingle	75	75	
				3.3.4.1.4	Clay/cementitious barrel tile	60	60	
				3.3.4.1.5	Wood Shingle, Cedar Shakes/Shingles	25	25	
			3.3.4.2		**Low Slope/Flat Roofs**			Need Item
				3.3.4.2.1	Low slope-Built-up Roof, with gravel finish	20	20	
				3.3.4.2.2	Low slope-Built-up Roof, no mineral or gravel finish	10	10	
				3.3.4.2.3	Low slope-Adhered rubber membrane, (EPDM)	15	15	
				3.3.4.2.4	Low slope-Thermoplastic membrane, (TPO, vinyl)	15	15	

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				3.3.4.2.5	Low slope-Rubberized/elastomeric white/cool roof	15	15	
			3.3.4.3		**Roof Drainage, Trim & Accessories**			Need Item
				3.3.4.3.1	Gutters/Downspouts, aluminum	20	20	
				3.3.4.3.2	Gutters/Downspouts, copper	50	50	
				3.3.4.3.3	Low slope-roof drains, scuppers	30	30	
				3.3.4.3.4	Soffits, Wood, Vinyl, Metal	20	20	
				3.3.4.3.5	Fascia, Wood, Vinyl	20	20	
				3.3.4.3.6	Roof Hatch	30	30	
				3.3.4.3.7	Service Door	30	30	
				3.3.4.3.8	Roof Skylight	30	30	
	3.4				**Mech.-Elect.-Plumbing**			Need Category
		3.4.1			**Plumbing**			
			3.4.1.1		**Water Supply and Waste Piping**			Need Item
				3.4.1.1.1	PVC/CPVC pipe, supply and waste	75	75	
				3.4.1.1.2	Copper/brass hard pipe, supply	75	75	
				3.4.1.1.3	Copper Tube, supply	50	50	
				3.4.1.1.4	Galvanized pipe, supply	40	40	
				3.4.1.1.5	Cast iron sanitary waste	75	75	
				3.4.1.1.6	Domestic Cold Water Pumps	20	20	
				3.4.1.1.7	Sewage Ejectors	50	50	
				3.4.1.1.8	Commercial Sump Pump	20	20	
				3.4.1.1.9	Residential Sump Pump	15	15	
				3.4.1.1.10	Water Softener/Filtration	15	15	
			3.4.1.2		**Domestic Water Heating**			Need Item

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				3.4.1.2.1	DHW circulating pumps	15	15	
				3.4.1.2.2	DHW storage tanks	15	15	
				3.4.1.2.3	Exchanger, in tank or boiler	15	15	
				3.4.1.2.4	External tankless heater, gas or electric	20	20	
				3.4.1.2.5	Solar hot water	20	20	
				3.4.1.2.6	Residential hot water heater, gas or electric	12	15	
				3.4.1.2.7	Flue, gas water heaters	35	35	
				3.4.1.2.8	Boilers, Oil Fired, Sectional	25	25	
				3.4.1.2.9	Boilers, Gas Fired, Sectional	25	25	
				3.4.1.2.10	Boilers, Oil/ Gas/ Dual Fuel, Low MBH	30	30	
				3.4.1.2.11	Boilers, Oil/ Gas/ Dual Fuel, High MBH	40	40	
				3.4.1.2.12	Boilers, Gas Fired Atmospheric	25	25	
				3.4.1.2.13	Boilers, Electric	20	20	
				3.4.1.2.14	Boiler Blowdown and Water Treatment	25	25	
				3.4.1.2.15	Boiler Room Pipe Insulation	25	25	
				3.4.1.2.16	Boiler Room Piping	50	50	
				3.4.1.2.17	Boiler Room Valves	25	25	
				3.4.1.2.18	Boiler Temperature Controls	15	15	
				3.4.1.2.19	Heat Exchanger	35	35	
			3.4.1.3		Fixtures			Need Item
				3.4.1.3.1	Faucets & valves	15	20	
				3.4.1.3.2	Bath tubs & sinks, cast iron	75	75	
				3.4.1.3.3	Bubs tubs & sinks, enameled or stainless steel, fiberglass	40	40	
				3.4.1.3.4	Bath tubs & sinks, porcelain	50	50	

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				3.4.1.3.5	Toilets/bidets/urinals	40	40	
				3.4.1.3.6	Flush valves	10	15	
				3.4.1.3.7	Tub/shower units or integrated assemblies	30	30	
		3.4.2			**Centralized HVAC Systems**			
			3.4.2.1		**Centralized Heating/Cooling Equipment**			Need Item
				3.4.2.1.1	Boilers, Oil Fired, Sectional - Centralized	25	25	
				3.4.2.1.2	Boilers, Gas Fired, Sectional - Centralized	25	25	
				3.4.2.1.3	Boilers, Oil/ Gas/ Dual Fuel, Low MBH - Centralized	30	30	
				3.4.2.1.4	Boilers, Oil/ Gas/ Dual Fuel, High MBH - Centralized	40	40	
				3.4.2.1.5	Boilers, Gas Fired Atmospheric - Centralized	25	25	
				3.4.2.1.6	Boilers, Electric - Centralized	20	20	
				3.4.2.1.7	Boiler Blowdown and Water Treatment - Centralized	25	25	
				3.4.2.1.8	Boiler Room Pipe Insulation - Centralized	25	25	
				3.4.2.1.9	Boiler Room Piping - Centralized	50	50	
				3.4.2.1.10	Boiler Room Valves - Centralized	25	25	
				3.4.2.1.11	Boiler Temperature Controls - Centralized	15	15	
				3.4.2.1.12	Heat Exchanger - Centralized	35	35	
				3.4.2.1.13	Combustion Air, Duct with Fixed Louvers	30	30	
				3.4.2.1.14	Combustion Air, Motor Louvers and Duct	25	25	
				3.4.2.1.15	Combustion Waste Flue	40	40	
				3.4.2.1.16	Cooling tower	25	25	
				3.4.2.1.17	Chilling plant	20	20	
				3.4.2.1.18	Steam supply station	50	50	
				3.4.2.1.19	Free standing chimney	50	50	

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			3.4.2.2		**Centralized Heat/Air/Fuel Distribution**			Need Item
				3.4.2.2.1	Fuel oil/propane storage tanks	40	40	
				3.4.2.2.2	Remediate/remove abandoned tanks/fuel lines	100	100	
				3.4.2.2.3	Fuel transfer system	25	25	
				3.4.2.2.4	Gas/oil distribution lines	50	50	
				3.4.2.2.5	Gas meter	40	40	
				3.4.2.2.6	2 pipe/4 pipe hydronic distribution-above grade	50	50	
				3.4.2.2.7	2 pipe/4 pipe hydronic distribution-in ground	25	25	
				3.4.2.2.8	Hydronic/Water Circulating Pumps	20	20	
				3.4.2.2.9	Hydronic/Water Controller	20	20	
				3.4.2.2.10	Radiation-steam/hydronic (baseboard or freestanding radiator)	50	50	
				3.4.2.2.11	Fan Coil Unit, Hydronic	30	30	
				3.4.2.2.12	Central exhaust fans/blowers	20	20	
		3.4.3			**Decentralized and Split HVAC Systems**			
			3.4.3.1		**Dwelling/Common Area HVAC Equipment**			Need Item
				3.4.3.1.1	Electric heat pump, condenser, pad or rooftop	15	15	
				3.4.3.1.2	Electric AC condenser, pad or rooftop	15	15	
				3.4.3.1.3	Electric furnace/air handler	20	20	
				3.4.3.1.4	Gas furnace/air handler	20	20	
				3.4.3.1.5	Hydronic heat/electric AC air handler	25	25	
				3.4.3.1.6	Hydronic feed electric heat pump/air handler	25	25	
				3.4.3.1.7	Wall mounted electric/gas heater	25	25	
				3.4.3.1.8	Electric baseboard heater	30	30	
				3.4.3.1.9	PTAC Thruwall (packaged terminal air conditioning)	15	15	

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				3.4.3.1.10	Window or thru-wall air conditioners	10	10	
				3.4.3.1.11	Package HVAC roof top	15	15	
				3.4.3.1.12	Air filtration/humidity control devices (humidifiers, HRV's)	20	20	
				3.4.3.1.13	Duct, rigid sheet metal, insulated if not in conditioned space	35	35	
				3.4.3.1.14	Duct, flexible, insulated	20	20	
				3.4.3.1.15	Duct, sealing-mastic or UL 181A or 181B tape.	20	20	
				3.4.3.1.16	Diffusers, registers	20	20	
				3.4.3.1.17	Fireplace, masonry & firebrick, masonry chimney	75	75	
				3.4.3.1.18	Fireplace, factory assembled	35	35	
				3.4.3.1.19	Fireplace insert, stove	50	50	
				3.4.3.1.20	Chimneys, metal, and chimney covers	35	35	
			3.4.3.2		**HVAC Controls**			Need Item
				3.4.3.2.1	Dwelling/common area thermostat	15	20	
				3.4.3.2.2	Heat sensors	15	15	
				3.4.3.2.3	Outdoor temperature sensor	10	10	
		3.4.4			**Electrical**			
			3.4.4.1		**Electric Service & Metering**			Need Item
				3.4.4.1.1	Building service panel	50	50	
				3.4.4.1.2	Building meter	40	40	
				3.4.4.1.3	Tenant meters, meter panel	40	40	
			3.4.4.2		**Electrical Distribution**			Need Item
				3.4.4.2.1	Tenant electrical panel	50	50	
				3.4.4.2.2	Unit/building wiring	50	50	
			3.4.4.3		**Electric Lighting & Fixtures**			Need Item

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				3.4.4.3.1	Switches & outlets	35	35	
				3.4.4.3.2	Lighting - exterior entry	15	20	
				3.4.4.3.3	Lighting- interior common space	25	30	
				3.4.4.3.4	Lighting - Tenant Spaces	20	25	
				3.4.4.3.5	Door bells, chimes	20	25	
			3.4.4.4		**Telecommunications Equipment**			Need Item
				3.4.4.4.1	Satellite dishes/antennae	20	20	
				3.4.4.4.2	Telecom panels & controls	20	20	
				3.4.4.4.3	Telecom cabling & outlets	20	20	
	3.5				**Vertical Transportation**			Need Category
		3.5.1			**Elevators/Escalators**			Need Item
			3.5.1.1		Electrical switchgear	50	50	
			3.5.1.2		Electrical wiring	30	30	
			3.5.1.3		Elevator controller, call, dispatch, emergency	10	20	
			3.5.1.4		Elevator cab, interior finish	10	20	
			3.5.1.5		Elevator cab, frame	35	50	
			3.5.1.6		Elevator, machinery	20	30	
			3.5.1.7		Elevator, shaftway doors	10	20	
			3.5.1.8		Elevator, shaftway hoist rails, cables, traveling	20	25	
			3.5.1.9		Elevator, shaftway hydraulic piston and leveling	20	25	
			3.5.1.10		Escalators	50	50	
	3.6				**Life Safety/Fire Protection**			Need Category
		3.6.1			**Sprinklers and Standpipes**			Need Item
			3.6.1.1		Building fire suppression sprinklers, standpipes	50	50	

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			3.6.1.2		Fire pumps	20	20	
			3.6.1.3		Fire hose stations	50	50	
			3.6.1.4		Fire extinguishers	10	15	
		3.6.2			**Alarm, Security & Emergency Systems**			Need Item
			3.6.2.1		Tenant space alarm systems	10	15	
			3.6.2.2		Residential smoke detectors	5	7	
			3.6.2.3		Call station	10	15	
			3.6.2.4		Emergency/auxiliary generator	25	25	
			3.6.2.5		Emergency/auxiliary fuel storage tank	25	25	
			3.6.2.6		Emergency lights, illuminated signs	5	10	
			3.6.2.7		Smoke and fire detection system, central panel	15	15	
			3.6.2.8		Buzzer/intercom, central panel	20	20	
			3.6.2.9		Tenant buzzer / intercom /secured entry system	20	20	
		3.6.3			**Other Systems**			Need Item
			3.6.3.1		Pneumatic Lines and Controls	30	30	
			3.6.3.2		Auto-securing doors/entries/lock down	30	30	
	3.7				**Interior Elements**			
		3.7.1			**Interiors-Common Areas**			Need Category
			3.7.1.1		**Finished walls, ceilings, floors**			Need Item
				3.7.1.1.1	Drywall - Common	35	40	
				3.7.1.1.2	Plaster - Common	50	50	
				3.7.1.1.3	Paints, stains, clear finishes, interior - Common	15	20	
				3.7.1.1.4	Wallpapers - Common	15	20	
				3.7.1.1.5	Wall tile, ceramic, glass, natural stone - Common	35	50	

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				3.7.1.1.6	Floor tile, ceramic, natural stone - Common	40	50	
				3.7.1.1.7	Concrete/Masonry/Terrazzo - Common	75	75	
				3.7.1.1.8	Hardwood floor (3/4" strip or parquet) - Common	50	50	
				3.7.1.1.9	Wood floor, laminated/veneered - Common	20	25	
				3.7.1.1.10	Resilient tile or sheet floor (vinyl, linoleum) - Common	15	20	
				3.7.1.1.11	Carpet - Common	6	10	
				3.7.1.1.12	Acoustic tile/drop ceiling - Common	15	20	
			3.7.1.2		**Millwork (doors, trim, cabinets, tops)**			Need Item
				3.7.1.2.1	Interior, hollow core doors - Common	20	25	
				3.7.1.2.2	Interior doors, solid core, wood, metal clad, fire rated	30	35	
				3.7.1.2.3	Door trim - Common	20	30	
				3.7.1.2.4	Wall trim (base, chair rail, crown moldings) - Common	30	35	
				3.7.1.2.5	Passage & lock sets - Common	15	20	
				3.7.1.2.6	Bifold & sliding doors - Common	15	20	
				3.7.1.2.7	Cabinets & vanities - Common	20	25	
				3.7.1.2.8	Tops, granite, natural stone, engineered stone - Common	50	50	
				3.7.1.2.9	Tops, solid surface, stainless steel - Common	40	50	
				3.7.1.2.10	Tops, plastic laminates, wood - Common	15	25	
				3.7.1.2.11	Vanity tops, cultured marble, molded acrylic, fiber glass - Common	25	35	
			3.7.1.3		**Appliances**			Need Item
				3.7.1.3.1	Refrigerator/freezer - Common	15	15	
				3.7.1.3.2	Range, cook top, wall oven - Common	20	25	
				3.7.1.3.3	Range hood - Common	20	25	
				3.7.1.3.4	Microwave - Common	10	10	

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.7.1.3.5	Disposal (food waste) - Common	7	10	
				3.7.1.3.6	Compactors (interior, residential grade) - Common	7	10	
				3.7.1.3.7	Dishwasher - Common	10	15	
				3.7.1.3.8	Clothes washer/dryer - Common	10	15	
			3.7.1.4		**Specialties**			Need Item
				3.7.1.4.1	Interior Mail Facility	20	25	
				3.7.1.4.2	Common area bath accessories (towel bars, grab bars, toilet stalls, etc.)	7	12	
				3.7.1.4.3	Mirrors & medicine cabinets - Common	20	25	
				3.7.1.4.4	Closet/storage specialties, shelving - Common	20	25	
				3.7.1.4.5	Common area interior stairs	50	50	
				3.7.1.4.6	Common area railings	15	25	
				3.7.1.4.7	Bath/kitchen vent/exhaust fans - Common	15	15	
				3.7.1.4.8	Ceiling fans - Common	15	15	
				3.7.1.4.9	Window treatments, drapery rods, shades, blinds, etc. - Common	15	25	
				3.7.1.4.10	Indoor recreation and fitness equipment	10	15	
				3.7.1.4.11	Entertainment centers, theatre projection and seating	15	25	
		3.7.2			**Interiors-Dwelling Units**			Need Category
			3.7.2.1		**Finished walls, ceilings, floors**			Need Item
				3.7.2.1.1	Drywall	35	40	
				3.7.2.1.2	Plaster	50	50	
				3.7.2.1.3	Paints, stains, clear finishes, interior	10	15	
				3.7.2.1.4	Wallpapers	10	15	
				3.7.2.1.5	Wall tile, ceramic, glass, natural stone	30	40	
				3.7.2.1.6	Floor tile, ceramic, natural stone	40	50	

CNA e-Tool Estimated Useful Life Table

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Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.7.2.1.7	Concrete/Masonry/Terrazzo	75	75	
				3.7.2.1.8	Hardwood floor (3/4" strip or parquet)	50	50	
				3.7.2.1.9	Wood floor, laminated/veneered	15	20	
				3.7.2.1.10	Resilient tile or sheet floor (vinyl, linoleum)	15	20	
				3.7.2.1.11	Carpet	6	10	
				3.7.2.1.12	Acoustic tile/drop ceiling	15	20	
			3.7.2.2		**Millwork (doors, trim, cabinets, tops)**			Need Item
				3.7.2.2.1	Interior, hollow core doors	20	25	
				3.7.2.2.2	Interior doors, solid core, wood, metal clad	30	35	
				3.7.2.2.3	Door trim	20	30	
				3.7.2.2.4	Wall trim (base, chair rail, crown moldings)	25	35	
				3.7.2.2.5	Passage & lock sets	12	20	
				3.7.2.2.6	Bifold & sliding doors	12	20	
				3.7.2.2.7	Cabinets & vanities	20	25	
				3.7.2.2.8	Tops, granite, natural stone, engineered stone	50	50	
				3.7.2.2.9	Tops, solid surface, stainless steel	40	50	
				3.7.2.2.10	Tops, plastic laminates, wood	15	25	
				3.7.2.2.11	Vanity tops, cultured marble, molded acrylic, fiber glass	25	35	
			3.7.2.3		**Appliances**			Need Item
				3.7.2.3.1	Refrigerator/freezer	12	15	
				3.7.2.3.2	Range, cook top, wall oven	15	25	
				3.7.2.3.3	Range hood	15	25	
				3.7.2.3.4	Microwave	10	10	
				3.7.2.3.5	Disposal (food waste)	7	10	

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
				3.7.2.3.6	Compactors (interior, residential grade)	7	10	
				3.7.2.3.7	Dishwasher	10	15	
				3.7.2.3.8	Clothes washer/dryer	10	15	
			3.7.2.4		**Specialties**			Need Item
				3.7.2.4.1	Bath accessories (towel bars, grab bars, etc.)	7	12	
				3.7.2.4.2	Mirrors & medicine cabinets	15	25	
				3.7.2.4.3	Closet/storage specialties, shelving	15	25	
				3.7.2.4.4	Interior stairs	50	50	
				3.7.2.4.5	Stair and loft railings	20	25	
				3.7.2.4.6	Bath/kitchen vent/exhaust fans	15	15	
				3.7.2.4.7	Ceiling fans	10	15	
				3.7.2.4.8	Window treatments, drapery rods, shades, blinds, etc.	10	20	
4					**Additional Considerations**			Need Category
	4.1				**Environmental items (not elsewhere defined)**			Need Item
		4.1.1			Environmental remediation alarms	5	5	
		4.1.2			Environmental remediation pumps & equipment	5	5	
		4.1.3			Mold-treat-remediate	100	100	
		4.1.4			Pest Control/Integrated Pest Management Plan	1	1	
	4.2				**Lead based paint (LBP), asbestos**			Need Item
		4.2.1			LBP inspection	100	100	
		4.2.2			**Lead based paint abatement**			
			4.2.2.1		LBP encapsulation (abatement)	20	20	
			4.2.2.2		LBP removal	100	100	
		4.2.3			**Lead based paint interim controls**			

CNA e-Tool Estimated Useful Life Table

This table lists the recommended average useful life of the categories of assets that should be considered in a Capital Needs Assessment. If an observed item is not listed, it should be assigned to the most closely related category. The Standard EUL for a component type is fixed. The user may estimate the Remaining Useful Life of any existing component independent of the Standard EUL by entering the assessed RUL in the appropriate space on the Components tab of the Excel Assessment Tool and by justifying the assessed RUL in the adjacent comment box. When identifying an alternative toan existing component the user may specify an EUL for the alternative which differs from the Standard EUL for that component type but must enter an explanation in the Notes space on the Alternatives tab of the Tool. Each specific component assessed is given a free-form description by the needs assessor and this description is the "component ID" or component name which may be more specific than the "Component Type", e.g (a particular kind, size, etc of refrigerator, not just any refrigerator.)

Numbering by ASTM 2018-08 Outline								
	System Description	Overall General Description	Component	Sub-Component	Component Description	Family	Elderly	3 tiers of categorization: Need Category, Need Item, Component Type
			4.2.3.1		LBP hazard interim control	6	6	
			4.2.3.2		LBP Encapsulation (interim control)	6	6	
		4.2.4			**Asbestos**			
			4.2.4.1		Asbestos encapsulation (abatement)	10	10	
			4.2.4.2		Asbestos Removal	100	100	
	4.3				**Commercial Tenant Improvements**			Need Item
		4.3.1			Owner provided item(s) (specify)	5	5	
		4.3.2			Owner provided $ allowance (specify)	5	5	

Attachment E

CAPITAL NEEDS ASSESSMENT REPORT

	GENERAL NOTES:
A	Reviews of preliminary Capital Needs Assessment (CNA) reports should be based on: 1. The Statement of Work referenced in the written Agreement with the Provider. 2. Rural Development case file, such as property records and inspection reports. 3. Latest available cost data published by RS Means. 4. Rural Development guidelines. 5. Fannie Mae guidelines.
B	The reviewer should give special attention to the line items with the highest total costs.
C	The reviewer should be careful to note whether all systems or components that should be included have indeed been included in the report.
D	If all review items are answered "YES", the Provider should be advised to finalize the CNA with no or only a few minor changes.
E	Any review items answered "NO" should be explained in writing to the Provider in sufficient detail for clarity and appropriate actions taken.
F	The final report should be reviewed to verify that any minor changes and items answered with a "NO" in the first review have been satisfactorily addressed or corrected.
G	When item "D" is completed, the CNA Reviewer should advise the appropriate Rural Development official that the CNA should be accepted as the final report.

	REVIEW ITEMS:	PRIMARY BASIS *	YES	NO
1	Is the report in the required format?	1		
2	Does the report fully describe the property?	1		
3	Are photographs provided to generally describe the property's buildings and other facilities?	1		
4	Does the report identify who performed the on-site inspection?	1		
5	Does the report identify who prepared the report?	1		
6	Was an adequate number of dwelling units inspected?	1		
7	Is the length of the study period adequate?	1		
8	Is the list of property components complete?	5		
9	Is the list divided into the appropriate major system groups?	1		
10	Are the existing property components accurately described?	2		
11	Are the expected useful lifetimes of the components reasonably accurate?	5		
12	Are the reported ages of the components reasonably accurate?	2		
13	Is the current condition of each component accurately noted?	2		
14	Are the effective remaining lifetimes of components correctly calculated?	5		
15	Are proposed corrective actions appropriately identified?	1		

16	Are critical immediate repairs appropriately identified?	1		
17	Are items being replaced with "in-kind" materials when appropriate?	1		
18	Are the component quantities reasonably accurate?	2		
19	Are photographs provided to describe deficiencies?	1		
	REVIEW ITEMS:	PRIMARY BASIS *	YES	NO
20	Does the report adequately address environmental hazards and other relevant environmental issues?	1		
21	Does the report adequately address accessibility issues?	1		
22	Does the report address any existing accessibility transition plans and their adequacy?	1		
23	Are photographs provided to describe existing kitchens and bathrooms in the fully accessible units?	1		
24	Are the proposed years for repair or replacement reasonable?	5		
25	Are the repair/replacement durations appropriate and reasonable?	5		
26	Are the detailed estimated repair and replacement costs calculated in current dollars?	1		
27	Are the estimated repair and replacement costs reasonable?	3		
28	Are the sources for cost data explained in the report?	1		
29	Is the projected inflation rate appropriate?	1		
30	Have the costs in current and inflated dollars been totaled for each year?	1		
31	Have the costs for each year and grand totals been correctly calculated?	5		
32	Does the data in the report narrative and summary charts match?	5		
33	Does the report exclude routine maintenance, operation, and low cost expenses?	4		
34	Does the report include all deficiencies known to Rural Development?	2		
35	Does the report include all other relevant data or information known to Rural Development?	2		

* see General Note "A"

Attachment F

SAMPLE CAPITAL NEEDS ASSESSMENT REVIEW REPORT
[Review of Preliminary/Final CNA Report]

Property Name and Location:

CNA Provider:

CNA Reviewer:

Date of Preliminary / Final CNA Report:

Date of Review:

Reviewer's Comments:

-
-
-

Purpose / Intended Use / Intended User of Review:

- The purpose of this CNA review assignment is to render an opinion as to the completeness, adequacy, relevance, appropriateness, and reasonableness of the workunder review relative to the requirements of Rural Development.
- The intended use of the review report is to help meet Rural Development loan underwriting requirements for permanent financing under the Section 515 MPRdemonstration program. The review is not intended for any other use.
- The intended user of the review is only Rural Development.

Scope of Review:

The scope of the CNA review process involved the following procedures:

- The review included a reading/analysis of the following components from the CNAreport and the additional due diligence noted. The contents from the CNA work filewere not reviewed. The components that were reviewed are:
  - Date of the Report
  - Narrative
  - Description of Improvements
  - Photographs of the Subject Property

- Capital Needs Summary
- Systems and Conditions Forms
- Critical Needs Forms
- Capital Needs over the Term Forms

- This is a desk review, and the reviewer has not inspected the subject Property.
- The reviewer has/has not confirmed data contained within the CNA report.

Review Conclusion:

In the reviewer's opinion, given the scope of the work under review:

- The subject CNA *meets/does not meet* the reporting requirements ofRural Development.
- The data *appears/does not ap*pear to be adequate and relevant.
- The CNA methods and techniques used *are/are not* appropriate.
- The analyses, opinions, and conclusions *are/are not* appropriate and reasonable.
- This is a review report on a *preliminary/final* CNA report. The *preliminary/final* CNA report is subject to review discussions between Rural Development and the CNA Recipient of the subject Property and between the CNA Recipient and the CNAProvider. The CNA Recipient is the CNA Provider's client, and only the client can instruct the CNA Provider to revise the *preliminary/final* report. To be acceptable to Rural Development, the final CNA report should address any errors or deficiencies identified in the *Reviewer's Comments* section of this review report.

CNA PROVIDER TO INSERT IN MEMO FORMAT THEIR WRITTEN REPORT AND THEN HAVE SIGNATURE PAGE BELOW FOR REVIEWER AND UNDERWRITER/LOAN OFFICIAL TO SIGN.

Signed by:

_____ _____

(CNA Reviewer) (Underwriter / Loan Official)

(Please note: for the CNA Review Report of the preliminary CNA, only the CNA Reviewer needs tosign the report on behalf of Rural Development. For the CNA Review Report of the final CNA, the CNA Reviewer and the Underwriter/Loan Official must sign the report. This is to encourage discussion between the Agencies parties, so that both the CNA Reviewer and the Underwriter are involved in the process of accepting the final CNA for the Property.)

Attachment G

Capital Needs Assessment Guidance to the Reviewer

AGREEMENT TO PROVIDE CAPITAL NEEDS ASSESSMENT

	GENERAL NOTES:
A	Reviews of proposed agreements for Capital Needs Assessments (CNA) should be based on Rural Development and other Rural Development -recognized guidelines.
B	If all review items are answered "NO", the reviewer should advise the appropriate Rural Development official that the Agreement should be accepted.
C	Any review items answered with a "YES" should be explained in writing to the proposed Provider in sufficient detail for clarity and appropriate actions to be taken.
D	If all review items answered with a "YES" are satisfactorily addressed or corrected by the proposed Provider, the reviewer should advise the appropriate Rural Development official that the Agreement should be accepted.
E	If any review items answered with a "YES" cannot be satisfactorily addressed or corrected by the proposed CNA Provider, the reviewer should advise the appropriate Rural Development official that the Agreement should NOT be accepted.

	REVIEW ITEMS:	YES	NO
1	Does the proposed Agreement omit Rural Development's Addendum to CNA Contract?		
2	Does the proposed Agreement omit Rural Development's CNA Statement of Work?		
3	Is there any evidence or indication that the proposed CNA Provider has an identity of interest, as defined in 7 C.F.R. part 3560?		
4	Is there any evidence or indication that the proposed CNA Provider is NOT trained in evaluating site and building systems, and health, safety, physical, structural, environmental and accessibility conditions?		
5	Is there any evidence or indication that the proposed CNA Provider is NOT trained in estimating costs for repairing, replacing, and improving site and building components?		
6	Is there any evidence or indication that the proposed CNA Provider is NOT experienced in providing CNAs for MFH properties that are similar to those in the Section 515 Program?		
7	Is there any evidence or indication that the proposed CNA Provider is NOT knowledgeable of site, building and accessibility codes and standards?		
8	Is there any evidence or indication that the proposed CNA Provider is debarred or suspended from participating in Federally-assisted programs?		
9	Does the proposed fee appear to be unreasonable?		

CAPITAL NEEDS ASSESSMENT REPORT

	GENERAL NOTES:
A	Reviews of preliminary Capital Needs Assessment (CNA) reports should be based on: 1. The Statement of Work referenced in the written agreement with the provider 2. Rural Development case file, such as property records and inspection reports 3. Latest available cost data published by RS Means
B	The reviewer should give special attention to the line items with the highest total costs.
C	The reviewer should be careful to note whether all systems or components that should be included have indeed been included in the report.
D	If all review items are answered "YES", the Provider should be advised to finalize the CNA with no or only a few minor changes.
E	Any review items answered with a "NO" should be explained in writing to the Provider in sufficient detail for clarity and appropriate actions taken.
F	The final report should be reviewed to verify that any minor changes and items answered with a "NO" in the first review have been satisfactorily addressed or corrected.
G	When item "D" is completed, the CNA Reviewer should advise the appropriate Rural Development official that the CNA should be accepted as the final report.

	REVIEW ITEMS:	**PRIMARY BASIS ***	**YES**	**NO**
1	Is the report in the required format?	1		
2	Does the report fully describe the property?	1		
3	Are photographs provided to generally describe the property's buildings and other facilities?	1		
4	Does the report identify who performed the on-site inspection?	1		
5	Does the report identify who prepared the report?	1		
6	Was an adequate number of dwelling units inspected?	1		
7	Is the length of the study period adequate?	1		
8	Is the list of property components complete?	5		
9	Is the list divided into the appropriate major system groups?	1		
10	Are the existing property components accurately described?	2		
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12	Are the reported ages of the components reasonably accurate?	2		
13	Is the current condition of each component accurately noted?	2		
14	Are the effective remaining lifetimes of components correctly calculated?	5		
15	Are proposed corrective actions appropriately identified?	1		
16	Are critical immediate repairs appropriately identified?	1		
17	Are items being replaced with "in-kind" materials when appropriate?	1		

18	Are the component quantities reasonably accurate?	2		
19	Are photographs provided to describe deficiencies?	1		
	REVIEW ITEMS:	**PRIMARY BASIS ***	**YES**	**NO**
20	Does the report adequately address environmental hazards and other relevant environmental issues?	1		
21	Does the report adequately address accessibility issues?	1		
22	Does the report address any existing accessibility transition plans and their adequacy?	1		
23	Are photographs provided to describe existing kitchens and bathrooms in the fully accessible units?	1		
24	Are the proposed years for repair or replacement reasonable?	5		
25	Are the repair/replacement durations appropriate and reasonable?	5		
26	Are the detailed estimated repair and replacement costs calculated in current dollars?	1		
27	Are the estimated repair and replacement costs reasonable?	3		
28	Are the sources for cost data explained in the report?	1		
29	Is the projected inflation rate appropriate?	1		
30	Have the costs in current and inflated dollars been totaled for each year?	1		
31	Have the costs for each year and grand totals been correctly calculated?	5		
32	Does the data in the report narrative and summary charts match?	5		
33	Does the report exclude routine maintenance, operation, and low-cost expenses?	4		
34	Does the report include all deficiencies known to Rural Development?	2		
35	Does the report include all other relevant data or information known to Rural Development?	2		

* see General Note "A"

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–04718 Filed 3–8–22; 8:45 am]

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Part III

Department of Transportation

National Highway Traffic Safety Administration

New Car Assessment Program; Notice

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0002]

New Car Assessment Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments (RFC).

SUMMARY: NHTSA's New Car Assessment Program (NCAP) provides comparative information on the safety performance of new vehicles to assist consumers with vehicle purchasing decisions and to encourage safety improvements. In addition to star ratings for crash protection and rollover resistance, the NCAP program recommends particular advanced driver assistance systems (ADAS) technologies and identifies the vehicles in the marketplace that offer the systems that pass NCAP performance test criteria for those systems. This notice proposes significant upgrades to NCAP, first, by proposing to add four more ADAS technologies to those NHTSA currently recommends. The new technologies are blind spot detection, blind spot intervention, lane keeping support, and pedestrian automatic emergency braking. Other plans on updating NCAP are discussed in the Supplementary Information.

DATES: Comments should be submitted no later than May 9, 2022.

ADDRESSES: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Instructions:* For detailed instructions on submitting comments, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.
- *Privacy Act:* Anyone can search the electronic form of all comments received in 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 at *https://www.transportation.gov/privacy.* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ms. Jennifer N. Dang, Division Chief, New Car Assessment Program, Office of Crashworthiness Standards (Telephone: 202–366–1810). For legal issues, you may contact Ms. Sara R. Bennett, Office of Chief Counsel (Telephone: 202–366–2992). You may send mail to either of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This notice also proposes changes (including an increase in stringency) to the test procedures and performance criteria for the four currently recommended ADAS technologies in NCAP to enable enhanced evaluation of their capabilities in current vehicle models and to harmonize with other consumer information programs. Second, this notice describes (but does not propose at this time) how NHTSA could rate vehicles equipped with these ADAS technologies and requests comment on how best to develop this rating system. Third, NHTSA seeks (but does not propose at this time) to provide a crash avoidance rating at the point of sale on a vehicle's window sticker, consistent with the 2015 Fixing America's Surface Transportation (FAST) Act, and discusses ways of implementing the program, including a potential process for updating such information. Fourth, as part of a new NHTSA approach to NCAP, NHTSA is proposing a ''roadmap'' of the Agency's plans to upgrade NCAP in phases over the next several years and presents the roadmap for comment. Fifth, as another first for NCAP, NHTSA is considering utilizing NCAP to raise consumer awareness of certain safety technologies that may have the potential to help people make safe driving choices. This information may be of particular interest to parents or other caregivers shopping for a vehicle for a new or inexperienced driver in the household, or parents wanting to know more about rear seat alerts for hot car/heatstroke. Sixth and finally, this RFC discusses NHTSA's ideas for updating several programmatic aspects of NCAP to improve the program. The proposal on ADAS technologies and the aforementioned initiatives pave the way for the Agency to focus on a much broader safety strategy, including fulfilling not only the 2015 FAST Act directive but also the recent mandates included in Section 24213 of the November 2021 Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, to improve road safety for motor vehicle occupants as well as other vulnerable road users.

Table of Contents

I. Executive Summary

NHTSA's New Car Assessment Program (NCAP) supports NHTSA's mission to reduce the number of fatalities and injuries that occur on U.S. roadways. NCAP, like many other NHTSA programs, has contributed to significant reductions in motor vehicle fatalities. In the decade prior to the 1978 start of NCAP, fatalities from motor vehicle crashes exceeded 50,000 annually. In 2019, 36,096 people still lost their lives on U.S. roads. Passenger vehicle occupant fatalities decreased from 32,225 in 2000 to 22,215 in 2019.[1] This reduction is notable, particularly in light of the fact that the total number of vehicle miles traveled (VMT) in the U.S. has increased over time. However, during that same timeframe, pedestrian fatalities increased by 33 percent, from 4,739 in 2000 to 6,205 in 2019.[2] Furthermore, a statistical projection of traffic fatalities for the first half of 2021 shows that an estimated 20,160 people died in motor vehicle traffic crashes—the highest number of fatalities during the first half of the year since 2006, and the highest half-year percentage increase in the history of data recorded by the Fatality Analysis Reporting System (FARS).[3] In addition, the projected 11,225 fatalities during the second quarter of 2021 represents the highest second quarter fatalities since 1990, and the highest quarterly percentage change (+23.1 percent) in FARS data recorded history. Preliminary data reported by the Federal Highway Administration (FHWA) show that VMT in the first half of 2021 rebounded from a large pandemic-related dip that occurred in the first half of 2020, increasing by 173.1 billion miles, or about a 13 percent increase over the comparable period in 2020. The fatality rate for the first half of 2021 increased to 1.34 fatalities per 100 million VMT, up from the projected rate of 1.28 fatalities per 100 million VMT in the first half of 2020. Early evidence suggests that these fatality rates have increased as a result of increases in risky behaviors like driving and riding while unbelted, impaired driving, and speeding.[4] Although there have been notable gains in automotive safety over the past fifty years, far more work must be done.

This notice discusses how NCAP can support NHTSA's mission through its multi-faceted initiatives and broad safety strategies to address vehicle safety involving motor vehicle occupants, other vulnerable road users, and safe driving choices to further reduce injuries and fatalities occurring on the nation's roads. As stated in the Department of Transportation's National Roadway Safety Strategy, proposals to update NCAP are expected to emphasize safety features that protect people both inside and outside of the vehicle, and may include consideration of pedestrian protection systems, better understanding of impacts to pedestrians (*e.g.,* specific considerations for children), and automatic emergency braking and lane keeping assistance to benefit bicyclists and pedestrians. In a first-of-its-kind focus—especially relevant in light of increases in fatalities caused by risky driving behaviors—this notice seeks comment on how automakers could encourage consumers to choose safety technologies that could prevent risky behaviors from occurring in the first place. This notice also proposes significant upgrades to NCAP by adding four additional crash avoidance technologies (also termed ADAS throughout this notice) to the program, increasing the stringency of the tests for currently recommended ADAS technologies in NCAP for enhanced evaluation of their current capabilities, and exploring, for the first time, expanding NCAP to include safety for road users outside of the vehicle. Finally, this document presents a roadmap of NHTSA's current plans to upgrade NCAP in phases over the next several years.

Many of these efforts align with Section 24213 of the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act[5] and signed on November 15, 2021. First, this RFC, once finalized, fulfills the requirements of Section 24213(a) of the Bipartisan Infrastructure Law because NHTSA intends for the addition of the four technologies proposed in this RFC to ''finalize the proceeding for which comments were requested'' on December 16, 2015.[6] Specifically, the finalization of this RFC will close the December 16, 2015 proceeding and notice. While NHTSA has future plans described in the roadmap that the Agency discussed in the December 16, 2015 notice, none are considered an extension of the December 16, 2015 proceeding, though all information previously collected by NHTSA may be used in the development of future notices.

Second, this RFC fulfills portions of the requirements in Section 24213(b) of the Bipartisan Infrastructure Law that mandates the Agency ''publish a notice, for the purposes of public comment, to establish a means for providing consumer information relating to advanced crash-avoidance technologies'' within one year of enactment that includes: (1) An appropriate methodology for determining which advanced crash avoidance technologies should be included in the information, (2) performance test criteria for use by manufacturers in evaluating those technologies, (3) a distinct rating system involving each technology, and (4) updating overall vehicle ratings to include the new rating. Through this RFC, NHTSA is proposing four additional advanced crash avoidance technologies[7] for inclusion in NCAP, proposing the test criteria for evaluating the advanced crash avoidance technologies, and seeking comment on the future development of a crash avoidance rating system. NHTSA described in detail why it chose the four

[1] Traffic Safety Facts 2019 ''*A Compilation of Motor Vehicle Crash Data*.'' U.S. Department of Transportation. National Highway Traffic Safety Administration.

[2] Traffic Safety Facts 2000 ''*A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System*.'' U.S. Department of Transportation. National Highway Traffic Safety Administration.

[3] National Center for Statistics and Analysis. (2021, October), *Early Estimate of Motor Vehicle Traffic Fatalities for the First Half (January–June) of 2021*. (Traffic Safety Facts. Report No. DOT HS 813 199), Washington, DC: National Highway Traffic Safety Administration.

[4] See *https://www.nhtsa.gov/press-releases/2020-fatality-data-show-increased-traffic-fatalities-during-pandemic.*

[5] (Pub. L. 117–58).

[6] *Id.* at Section 24213(a); the notice referred to in the Bipartisan Infrastructure Law is 80 FR 78522 (Dec. 16, 2015). This is the notice that will be finalized once the final decision notice for today's RFC is published.

[7] This notice refers to the advanced crash avoidance technologies as Advanced Driver Assistance Systems (ADAS) technologies.

technologies that it did and how those technologies meet NHTSA's established criteria for inclusion in NCAP. Since NHTSA is proposing the addition of four advanced crash avoidance technologies and test criteria for evaluating those technologies, NHTSA meets two of the four requirements for fulfillment of the Advanced Crash Avoidance section of Sec. 24213(b).

Section 24213(b) of the law also requires that the Agency publish a notice ''to establish a means for providing to consumers information relating to pedestrian, bicyclist, or other vulnerable road user safety technologies'' within one year of enactment. This notice must meet requirements very similar to the advanced crash avoidance notice mentioned above. Since NHTSA is today proposing to include pedestrian automatic emergency braking (PAEB) in the program and is including test criteria for evaluating PAEB, NHTSA meets two of the four requirements for fulfillment of the Vulnerable Road User Safety section of Sec. 24213(b). The remaining requirements will be fulfilled once NHTSA proposes and then finalizes a new rating system for the crash avoidance technologies in NCAP. The law also requires that NHTSA submit reports to Congress on its plans for fulfilling the abovementioned requirements. NHTSA plans to fulfill these reporting requirements in a timely manner.

Third, this RFC, once finalized, fulfills the requirements of Section 24213(c) for NHTSA to establish a roadmap for implementation of NCAP changes that covers a term of ten years, with five year mid-term and five year long-term components, and with updates to the roadmap at least once every four years to reflect new Agency interests and public comments. The first roadmap must be completed within one year of the law's enactment. Once finalized, the roadmap on future updates to NCAP proposed in this RFC in its entirety would fulfill the ten-year roadmap requirement, as some proposed initiatives will be considered in NCAP in the first five years while others will be proposed in the second half of the ten-year plan. The details and analysis of this fulfillment are available in the Roadmap section of this RFC.

Fourth, this RFC, once finalized, will fulfill a provision in Section 24213(c) of the Bipartisan Infrastructure Law that requires NHTSA to make the roadmap available for public comment and to consider the public comments received before finalizing the roadmap. These provisions are in accordance with the Agency's current practice for updating NCAP and will be followed to finalize the roadmap. Section 24213(c) of the Law also requires that NHTSA identify opportunities where NCAP would ''benefit from harmonization with third-party safety rating programs.'' The Agency is taking steps to harmonize with existing consumer information rating programs where possible, and when appropriate, as noted in various sections of this RFC.

Fifth, Section 24213(c) of the Law requires the Agency to engage with stakeholders with diverse backgrounds and viewpoints not less than annually to develop future roadmaps. Again, this provision is in accordance with the Agency's current practice.

Components of the Notice

There are six main parts to this notice:

1. Proposes to add four new ADAS technologies to NCAP and updates to current NCAP test procedures,
2. Discusses the Agency's plan to develop a new rating system for advanced driver assistance technologies,
3. Describes steps to list the crash avoidance rating information on the vehicle's window sticker (the Monroney label) at the point of sale,
4. Describes roadmap of the Agency's plans to update NCAP in phases over the next ten years,
5. Requests comments on expanding NCAP to provide consumer information on safety technologies that could help people drive safer by preventing or limiting risky driving behavior, and
6. Discusses NHTSA's ideas for updating several programmatic aspects of NCAP to improve the program as a whole.

Each of the aforementioned aspects of the notice are described in greater detail that follows. First, the notice discusses in detail the Agency's proposed upgrade to add four more ADAS technologies to those currently recommended by NHTSA through NCAP and that are highlighted on the NHTSA website. Since 2010, NCAP has recommended four kinds of ADAS technologies to prospective vehicle purchasers, and has identified to shoppers the vehicles that have these technologies and that meet NCAP performance test criteria.[8] The current technologies are forward collision warning (FCW), lane departure warning (LDW), crash imminent braking (CIB), and dynamic brake support (DBS) (with the latter two collectively referred to as ''automatic emergency braking).[9] This notice proposes changes (including an increase in stringency) to the test procedures and performance criteria for LDW, CIB, DBS, and FCW to (1) enable enhanced evaluation of their capabilities in current vehicle models, (2) reduce test burden, and (3) harmonize with other consumer information programs. This notice also describes and proposes four more ADAS technologies: Blind spot detection, blind spot intervention, lane keeping support, and pedestrian automatic emergency braking.

These four new ADAS technologies are candidates for NCAP because data indicate they satisfy NHTSA's four prerequisites for inclusion in the program. The prerequisites are: (1) The update to the program addresses a safety need; (2) there are system designs (countermeasures) that can mitigate the safety problem; (3) existing or new system designs have safety benefit potential; and (4) a performance-based objective test procedure exists that can assess system performance. In order to address (1), a safety need, the Agency inherently looks first to address injuries and fatalities stemming from ''high-frequency and high-risk crash types''—as these crashes command the largest safety need and thus may also afford the biggest potential benefit. NHTSA does not calculate relative costs and benefits when considering inclusion in NCAP as it is a non-regulatory consumer information program. NHTSA discusses in this notice how each of the proposed ADAS technologies meets the four prerequisites. As explained in detail in this notice, the four new ADAS technologies proposed in NCAP are the only technologies that the Agency believes meet the four prerequisites for inclusion at this time. Each technology has demonstrated the ability to successfully mitigate high frequency and high-risk crash types. With the proposal to include pedestrian automatic emergency braking, NCAP would be expanded, for the first time, to include safety for people outside of the vehicle.

Second, this notice discusses the Agency's plan to develop a future rating system for new vehicles based on the availability and performance of all the NCAP-recommended crash avoidance technologies. Currently, NCAP only

[8] NCAP only indicates that a vehicle has a recommended technology when NHTSA has data verifying that the technology meets the minimum performance requirements set by NHTSA for acceptable performance. If a vehicle's ADAS is reported to have satisfied the performance requirements using the test methods specified by the Agency, then NHTSA uses a checkmark system to indicate on the NHTSA website that the vehicle is equipped with the technology. Each year, NHTSA also selects a sample of vehicles from that model year to verify ADAS system performance by performing its own tests.

[9] *https://www.nhtsa.gov/equipment/driver-assistance-technologies.*

recommends crash avoidance technologies to shoppers, and identifies the vehicles that offer the recommended technologies that pass NCAP system performance criteria. Unlike its crashworthiness and rollover protection programs that offer a combined rating based on vehicle performance in frontal, side, and rollover tests, the NCAP crash avoidance program does not currently have a rating system to differentiate the performance of ADAS technologies. NHTSA seeks to remedy this by developing a rating system for ADAS technologies to provide purchasers improved data with which to compare and shop for vehicles, and to spur improved vehicle performance. Accordingly, this document seeks public input on how best to develop this rating system.

Third, this notice announces NHTSA's steps to list the crash avoidance rating information on the vehicle's window sticker (the Monroney label) at the point of sale, as directed by the FAST Act.[10] NHTSA requests comment on ideas for the Monroney label information. Research is underway to maximize the effectiveness of the information in informing purchasing decisions. A follow-on notice will propose the crash avoidance rating system and explain how NHTSA would use the ratings. NHTSA will consider the comments received on this notice in conjunction with the information gained from the consumer research, to develop a proposal for a revised label. To help shoppers make more informed purchasing decisions, NHTSA also plans to provide fuel economy and greenhouse gas rating information with the NHTSA safety ratings, not only at the point of sale but also on the NHTSA website.

Fourth, as part of a new approach to advancing NCAP, NHTSA has developed a roadmap of the Agency's current plans to upgrade NCAP in phases over the next several years. The roadmap sets forth NHTSA's near-term and longer-term strategies for upgrading NCAP. The roadmap takes a gradual approach, which contemplates NHTSA's issuing proposed upgrades in phases, as the technologies mature to readiness for proposed inclusion in NCAP. Following a proposal will be a final decision document that responds to comments and provides NHTSA's decisions for that phase of NCAP updates, including the lead time provided for the implementation. The roadmap presents an estimated timeframe of the phased request for comment (RFC) notices.

Fifth, this notice also considers expanding NCAP to provide consumer information on safety technologies that could help people drive safer by preventing or limiting risky driving behavior. The Agency is examining the possibility of expanding NCAP to include technologies that promote NHTSA's continuing efforts to combat unsafe driving behaviors, such as distracted and impaired driving, riding in a vehicle unrestrained, and speeding. NHTSA currently uses many approaches to reduce dangerous driving behaviors, including high visibility enforcement and advertising campaigns like ''Click it or Ticket'' and ''Buzzed Driving is Drunk Driving.'' These campaigns have succeeded in reducing, but not eliminating, human causes of crashes and there is some evidence that their success has reached a plateau. NHTSA is considering how NCAP can promote technologies that would reduce unsafe driving or riding behavior like distracted and impaired driving, speeding, or riding in a vehicle unrestrained by targeting the human behaviors most likely to lead to crashes. This information may be of particular interest to parents or other caregivers who are shopping for a vehicle for a new or inexperienced driver in the household, or caregivers wanting to know more about rear seat alerts for hot car/heatstroke.

Sixth and finally, this RFC discusses NHTSA's ideas for updating several programmatic aspects of NCAP to improve the program as a whole. NHTSA requests comment on the Agency's ideas for revising the 5-star safety ratings program. This document also discusses ways NHTSA would like to update the existing ADAS technology program components, outlines challenges the Agency has encountered relating to manufacturer self-reported data, and proposes possible solutions to those problems. Lastly, the RFC discusses (1) updates to the NCAP website to improve the dissemination of vehicle safety information to consumers and (2) the development of an NCAP database to modernize the operational aspects of the program, including a new vehicle information submission process for vehicle manufacturers.

This RFC includes numbered questions throughout the notice that highlight specific topics on which NHTSA seeks comments. Although several questions may be posed un-numbered within the body of certain sections, these un-numbered questions are reiterated at the conclusion of the topic discussion and in Appendix B. To help ensure that NHTSA is able to address all comments received, the Agency requests that commenters provide corresponding numbering in their responses.

II. Background

NHTSA established its NCAP in 1978 in response to Title II of the Motor Vehicle Information and Cost Savings Act of 1972. When the program first began providing consumers with vehicle safety information derived from frontal crashworthiness testing, attention within the industry to vehicle safety was relatively new. Today's consumers are much more interested in vehicle safety, and this has become one of the key factors in vehicle purchasing decisions.[11] Vehicle manufacturers have responded to these consumer demands by offering safer vehicles that incorporate enhanced safety features. This has resulted in improved vehicle safety performance in NCAP, which has historically translated into higher NCAP star ratings.

Over the years, NHTSA began to incorporate ADAS technologies into NCAP's crash avoidance program. In 2007, NHTSA, for the first time, issued an RFC exploring the addition of ADAS technologies in NCAP.[12] Later, based on feedback received from written and oral comments, NHTSA published a final decision [13] expanding NCAP to include certain ADAS technologies and specific performance thresholds that a NHTSA-recommended ADAS system must meet. Beginning with model year 2011, the Agency began recommending on its website forward collision warning (FCW), lane departure warning (LDW), and electronic stability control (ESC),[14] and identified to shoppers which vehicles have the technologies that meet NCAP's performance requirements. NHTSA updated NCAP further to include crash imminent braking (CIB) and dynamic braking support (DBS)

[10] This Act requires NHTSA to promulgate a rule to require vehicle manufacturers to include crash avoidance information next to the crashworthiness information on vehicle window stickers (Monroney labels).

[11] See *www.regulations.gov*, See *www.regulations.gov*, Docket No. NHTSA–2020–0016 for a report of ''New Car Assessment Program 5-Star Quantitative Consumer Research.''

[12] 72 FR 3473 (January 25, 2007). The RFC included a request for comments on a NHTSA report titled, ''The New Car Assessment Program (NCAP); Suggested Approaches for Future Enhancements.''

[13] 73 FR 40016 (July 11, 2008).

[14] ESC was removed from the Agency's list of recommended ADAS technologies through NCAP beginning in model year 2014 when the technology became mandated under FMVSS No. 126, ''Electronic stability control.'' NHTSA also included rear video systems in its list of recommended technologies under NCAP from model years 2014 to 2017 and removed that technology from its list when it became mandated under FMVSS No. 111, ''Rear Visibility.''

technologies, beginning with model year 2018 vehicles.

This RFC continues those efforts. Through several notices and public meetings, NHTSA has continued discussions with stakeholders about which technologies should be included in NCAP and the minimum performance thresholds those technologies should meet. NHTSA has set forth in Appendix C to this RFC a detailed history of the requests for comment, public meetings, and other relevant events that underlie this notice.

The last RFC NHTSA published to discuss potential changes to NCAP was published in 2015. It was broad in subject matter and sought comment on NCAP's potential use of enhanced tools and techniques for evaluating the safety of vehicles, generating star ratings, and stimulating further vehicle safety developments.[15] On the crashworthiness front, the RFC sought comment on establishing a new frontal oblique test and on using more advanced crash test dummies in all tests. The RFC also sought comment about establishing a new crash avoidance rating category and including nine advanced crash avoidance technologies. Additionally, the RFC sought comment on establishing a new pedestrian protection rating category involving the use of adult and child head, upper leg, and lower leg impact tests and adding two new pedestrian crash avoidance technologies. The RFC sought comment on combining the three categories (crash avoidance, crashworthiness, and pedestrian protection) into one overall 5-star rating. NHTSA also received comments at two public hearings, one in Detroit, Michigan, on January 14, 2016, and the second at the U.S. DOT Headquarters in Washington, DC, on January 29, 2016. The numerous comments received on the RFC are discussed in a section below.

In October 2018, NHTSA hosted a third public meeting to re-engage stakeholders and seek up-to-date input to help the Agency plan the future of NCAP.[16] The Agency has also been working to finalize its research efforts on pedestrian crash protection, advanced anthropomorphic test devices (crash test dummies) in frontal and side impact tests, a new frontal oblique crash test, and an updated rollover risk curve. As discussed in the roadmap, NHTSA plans to upgrade the NCAP crashworthiness program in phases over the next several years with the knowledge it has acquired from the research programs.

III. ADAS Performance Testing Program

ADAS technologies have the potential to increase safety by preventing crashes or mitigating the severity of crashes that might otherwise lead to injury and death. NCAP currently conducts performance verification tests for four ADAS technologies: Forward collision warning (FCW), lane departure warning (LDW), crash imminent braking (CIB), and dynamic brake support (DBS). CIB and DBS are collectively referred to as automatic emergency braking (AEB). Vehicles that are equipped with one or more of these systems and pass NCAP's performance test requirements are listed as ''Recommended'' on NHTSA's website. When the Agency first began recommending FCW and LDW systems for model year 2011 vehicles, the fitment rate for these systems was less than 0.2 percent (where ''fitment rate'' means the percent of vehicles equipped with a particular ADAS system). For model year 2018 vehicles, 38.3 percent were equipped with FCW and 30.1 percent were equipped with LDW.[17] Providing vehicle safety information through NCAP can be an effective approach to advance the deployment of safer vehicle designs and technology in the U.S. market, inform consumer choices, and encourage adoption of new technologies that have life-saving potential.

With this notice, NHTSA is proposing to incorporate four additional ADAS technologies into NCAP's crash avoidance program: Lane keeping support (LKS), pedestrian automatic emergency braking (PAEB), blind spot warning (BSW), and blind spot intervention (BSI). Each of these technologies meets the Agency's established criteria for inclusion in NCAP: (1) The technology addresses a safety need; (2) system designs exist that can mitigate the safety problem; (3) the technology provides the potential for safety benefits; and (4) a performance-based objective test procedure exists that can assess system performance.[18] Details about how each of the proposed ADAS technologies addresses a safety need (criterion 1) will be discussed immediately below, while the remaining criteria will be discussed in the relevant sections under each technology.

To gain an understanding of the safety need that current ADAS technologies may address, NHTSA analyzed crash data for 84 mutually exclusive pre-crash scenarios.[19] The pre-crash scenarios used in the Agency's analysis were devised using a typology[20] concept[21] published by the Volpe National Transportation Systems Center (Volpe), which categorizes crashes into dynamically distinct scenarios based on pre-crash vehicle movements and critical events. As detailed in the referenced March 2019 report, NHTSA mapped the pre-crash scenario typologies to twelve currently available ADAS technologies[22] believed to potentially address certain pre-crash scenarios by assisting the driver to avoid or mitigate a crash. These mappings served to define the corresponding crash populations (*i.e.,* target crash populations).

Since several ADAS technologies presently available on passenger vehicles[23] are designed to mitigate the same crash scenarios, NHTSA first grouped the technologies with similar design intent into categories. The five technology categories that resulted from this grouping process include: (1) Forward collision prevention, (2) lane keeping, (3) blind spot detection, (4) forward pedestrian impact, and (5) backing collision avoidance. As shown in Table A–6, these categories address the following high-level crash types: (1) Rear-end; (2) rollover, lane departure, and road departure; (3) lane change/merge; (4) pedestrian; and (5) backing, respectively. Of the original 84 pre-crash scenarios studied, we mapped 34 relevant pre-crash scenario typologies to the five resulting technology categories that represented these crash types.

The forward collision prevention category included three ADAS technologies: Forward collision warning, crash imminent braking, and dynamic brake support (FCW, CIB, and

[15] 80 FR 78521 (Dec. 16, 2015).

[16] October 1, 2018.

[17] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[18] 78 FR 20599 (Apr. 5, 2013).

[19] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[20] A typology is the study or analysis of something, or the classification of something, based on types or categories.

[21] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[22] The twelve ADAS technologies were as follows: FCW, DBS, CIB, LDW, LKS, lane centering assist (LCA), BSW, BSI, lane change/merge warning, PAEB, RAB, and rear cross-traffic alert.

[23] Passenger vehicles were defined as cars, crossovers, sport utility vehicles (SUVs), light trucks, and vans having a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

DBS, respectively). The lane keeping category included lane departure warning (LDW), lane keeping support (LKS),[24] and lane centering assist (LCA). The blind spot detection category included blind spot warning (BSW),[25] blind spot intervention (BSI), and lane change/merge warning. The forward pedestrian impact avoidance category included pedestrian automatic emergency braking (PAEB). Lastly, the backing collision avoidance category included rear automatic braking (RAB) and rear cross-traffic alert (RCTA). These ADAS technologies are characterized as SAE International (SAE) Level 0–1 [26] driving automation systems.

NHTSA derived target crash populations for each of the five technology categories using 2011 to 2015 Fatality Analysis Reporting System (FARS) and National Automotive Sampling System General Estimates System (NASS GES) data sets, which serve as records of police-reported fatal and non-fatal crashes, respectively, on the nation's roads. For a given technology category, we compiled data for each of the corresponding pre-crash scenarios to generate target crash populations surrounding the number of crashes, fatalities, non-fatal injuries, and property-damage-only vehicles (PDOVs).[27] See Table 1 for a breakdown of target crash populations for each technology category.

TABLE 1—SUMMARY OF TARGET CRASHES BY TECHNOLOGY GROUP

Safety systems	Crashes	Fatalities	MAIS 1–5 injuries	PDOVs
1. FCW/DBS/CIB	1,703,541 (29.4%)	1,275 (3.8%)	883,386 (31.5%)	2,641,884 (36.3%)
2. LDW/LKA/LCA	1,126,397 (19.4%)	14,844 (44.3%)	479,939 (17.1%)	863,213 (11.9%)
3. BSW/BSI/LCM	503,070 (8.7%)	542 (1.6%)	188,304 (6.7%)	860,726 (11.8%)
4. PAEB	111,641 (1.9%)	4,106 (12.3%)	104,066 (3.7%)	6,985 (0.1%)
5. RAB/RvAB[28] RCTA	148,533 (2.6%)	74 (0.2%)	35,268 (1.3%)	231,317 (3.2%)
Combined	3,593,18 (62%)	20,841 (62.2%)	1,690,963 (60.3%)	4,604,125 (63.3%)

It is important to note that target crash populations for the five technology categories covered 62 percent of all crashes. Crossing path crashes, which also represented a large crash population and a significant number of fatalities, were not part of our analysis because we are not aware of a currently available ADAS technology that can effectively mitigate this crash type.[29] However, there are emerging safety countermeasures that hold potential to address some portion of these crashes in the future and these technologies will be considered for NCAP as they mature. These include intersection safety assist (ISA) systems that use onboard sensors with a wide field of view (*e.g.*, cameras, lidar, radar) as well as vehicle communications systems.[30] [31] Loss-of-control in single-vehicle crashes [32] also had a relatively high target population and fatality rate,[33] but were not included because, aside from electronic stability control (ESC) systems, which are mandated,[34] the Agency is not aware of an ADAS technology that effectively prevents this crash type and also meets NHTSA's criteria for inclusion in NCAP at this time.[35]

Of the pre-crash typologies included in NHTSA's March 2019 study, rear-end collisions were found to be the most common crash type with an annual average of 1,703,541 crashes. Rear-end collisions represented 29.4 percent of all annual crashes (5,799,883), followed by lane keeping typologies (1,126,397 crashes or 19.4 percent), and those relating to blind spot detection (503,070 crashes or 8.7 percent). Backing crashes (148,533) represented 2.6 percent of all crashes, followed by forward pedestrian crashes (111,641) at 1.9 percent.

Rear-end collisions also had the highest number of Maximum Abbreviated Injury Scale (MAIS) [36] 1–5 injuries at 883,386, which represented 31.5 percent of all non-fatal injuries (2,806,260) in Table A–1. Lane keeping crashes had the second highest number of injuries at 479,939 (17.1 percent), as shown in Table A–2, and blind spot crashes had the third highest at 188,304 (6.7 percent), as shown in Table A–3. These typologies were followed by forward pedestrian crashes at 3.7

[24] The study uses the term ''lane keeping assist'' (LKA), but NCAP terminology differs. NCAP uses the term ''lane keeping support'' throughout this document instead.

[25] Similarly, the study uses the term ''blind spot detection'' (BSD) but NCAP uses the term blind spot warning (BSW) throughout this document instead.

[26] SAE International (2018), *Taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles* (SAE J3016). Level 0: No Automation—The full-time performance by the human driver of all aspects of the dynamic driving task, even when enhanced by warning or intervention systems. Level 1: Driver Assistance—The driving mode-specific execution by a driver assistance system of either steering or acceleration/deceleration using information about the driving environment and with the expectation that the human driver performs all remaining aspects of the dynamic driving task.

[27] PDOVs are vehicles damaged in non-injury-producing crashes (*i.e.,* crashes in which vehicles only incur property damage and no occupants incur injury).

[28] Defined as reverse automatic braking in DOT HS 812 653.

[29] In its 2019 report, Volpe found that of the 5,480,886 light vehicle crashes occurring from 2011 through 2015, crossing path crashes, which totaled 1,131,273, represented 21 percent of all light vehicle crashes and 16 percent (3,972) of all fatalities (25,350).

[30] NHTSA recognizes that ISA systems are currently available on a small number of light vehicles. However, preliminary NHTSA testing has shown that current-generation ISA systems have only limited capabilities and therefore would not effectively mitigate intersection-related crashes at this time—which is one of the requirements in the four prerequisites for inclusion in NCAP.

[31] Vehicle-to-vehicle (V2V) and vehicle-to-everything (V2X) technologies have the potential to address crossing path crashes, but, while NHTSA remains strongly interested in these technologies, they are not included in the current roadmap. NHTSA is continuing to consider the various issues that bear upon the deployment path of V2X, including technological evolution and regulatory changes to the radio spectrum environment.

[32] Crash scenarios were categorized by the first sequence of a crash event. Target crashes for a technology (*e.g.,* lane-keeping crashes) were a collective of crash scenarios that are relevant to the technology. The Loss-of-control in single-vehicle scenario was defined as crashes where the first event was initiated by a passenger vehicle, and the event was coded as jackknife or traction loss. This crash scenario is mutually exclusive from those included in the lane-keeping crashes.

[33] Loss-of-control in single-vehicle crashes are about 1% of crashes and associated with 3% of fatalities.

[34] Federal Motor Vehicle Safety Standard No. 126.

[35] In its 2019 report, Volpe categorized 9 percent (470,733) of all light vehicle crashes (5,480,886) occurring from 2011 through 2015 as control loss crashes. Furthermore, 18 percent (4,456) of all fatal crashes (25,350) were due to control loss.

[36] The Abbreviated Injury Scale (AIS) is a classification system for assessing impact injury severity developed and published by the Association for the Advancement of Automotive Medicine and is used for coding single injuries, assessing multiple injuries, or for assessing cumulative effects on more than one injury. AIS ranks individual injuries by body region on a scale of 1 to 6 where 1 = minor, 2 = moderate, 3 = serious, 4 = severe, 5 = critical, and 6 = maximum (untreatable). MAIS represents the maximum injury severity, or AIS level, recorded for an occupant (*i.e.,* the highest single AIS for a person with one or more injuries). MAIS 0 means no injury.

percent and backing crashes at 1.3 percent, as shown in Table A–4.[37] [38]

NHTSA found that the lane keeping technology category, represented by rollover, lane departure, and road departure crashes, included the highest number of fatalities: 14,844, or 44.3 percent of all fatalities (33,477), as shown in Table A–2. This was followed by the forward pedestrian impact category, which included 4,106 pedestrian fatalities (12.3 percent), as shown in Table A–4. The forward collision prevention category, made up of rear-end crashes, included 1,275 fatalities (3.8 percent), as shown in Table A–1.[39] The blind spot detection technology category, represented by lane change/merge crashes, accounted for 1.6 percent of all fatalities, as shown in Table A–3. This was followed by backing crashes at 0.2 percent, as shown in Table A–5, which defined the backing collision avoidance category. The Agency notes that forward pedestrian crashes, which comprised the forward pedestrian impact category, ranked second highest for fatalities, and were the deadliest based on frequency of fatalities per crash.

In selecting the ADAS technologies to include in this proposal, the Agency wanted not only to target the most frequently occurring crash types, but also prioritize the most fatal and highest risk crashes. Based on the target crash populations studied, NHTSA believes that those represented by the forward collision prevention, lane keeping, blind spot detection, and forward pedestrian impact technology categories account for the most significant safety need.

The Agency notes that ADAS technologies representing the backing collision avoidance category (*i.e.,* RAB, RvAB, and RCTA) are not being proposed for this program update. The backing collision avoidance category did not appear in the top third for number of crashes, number of fatalities, or number of MAIS 1–5 injuries. This may be due, in part, to the fact that a significant part of this crash target population is addressed by FMVSS No. 111, ''Rear visibility.'' [40] The Agency needs additional time to assess all available real-world data and study the effects of the recent full implementation of FMVSS No. 111 prior to considering adoption of ADAS technologies designed to prevent backing crashes in NCAP. Furthermore, while the Agency acknowledges that it previously proposed adding rear automatic braking (RAB) to NCAP in the December 2015 notice, it is continuing to make changes to the RAB test procedure published in support of that proposal to address the comments received. Thus, it is not proposing to add this technology to NCAP at this time. The Agency may propose adding to NCAP ADAS technologies that address the backing pre-crash typologies as the Agency continues to analyze the real-world data and refine test procedure revisions.

Units of measure contained within this notice include meters (m), kilometers (km), millimeters per second (mm/s), meters per second (m/s), kilometers per hour (kph), feet (ft.), inches per second (in./s), feet per second (ft./s), miles per hour (mph), seconds (s), and kilograms (kg).

A. Lane Keeping Technologies

A study of the 2005 through 2007 fatal crashes [41] from the National Motor Vehicle Crash Causation Study (NMVCCS) [42] identified that 42 percent of lane departure crashes (*i.e.,* where the driver left the lane of travel prior to the crash) resulted in a rollover and 37 percent resulted in an opposite direction crash.

After analyzing NHTSA's 2019 target population study, NHTSA believes that lane keeping technologies such as lane departure warning (LDW), lane keeping support (LKS), and lane centering assist (LCA), can address ten pre-crash scenarios including the prevention or mitigation of roadway departures and crossing the centerline or median (*i.e.,* opposite direction crashes). These pre-crash scenarios represented on average 1.13 million crashes annually or 19.4 percent of all crashes that occurred on U.S. roadways, and resulted in 14,844 fatalities and 479,939 MAIS 1–5 injuries, as shown in Table A–2. This equals 44.3 percent of all fatalities and 17.1 percent of all injuries recorded.[43] [44]

NCAP currently provides information on the performance of LDW, one of the lane keeping ADAS technologies. LDW was introduced in the program in 2010 for model year 2011 vehicles.[45] At the time, the fitment rate for LDW was less than 0.2 percent. In model year 2018, it was 30.1 percent.[46] Although the adoption rate for LDW has increased over this period, it has not increased as significantly as the fitment rate for forward collision warning (FCW), which saw an approximate 40 percent increase over the same time period. A possible explanation regarding the lower fitment rate for LDW will be discussed in the next section. A second lane keeping ADAS technology that the Agency believes is appropriate for inclusion in NCAP is LKS. NHTSA believes that LKS may provide additional safety benefits that LDW cannot and may more effectively address the number of fatalities and injuries related to lane departure crashes.

1. Updating Lane Departure Warning (LDW)

Lane departure warning is a NHTSA-recommended technology that is currently included in NCAP to mitigate lane departure crashes. LDW systems are used to help prevent crashes that result when a driver unintentionally allows a vehicle to drift out of its lane of travel. These systems often use camera-based sensors to detect lane markers, such as solid lines (including those marked for bike lanes), dashed lines, or raised reflective indicators such as Botts' Dots, ahead of the vehicle.[47] Lane departure alerts are presented to the driver when the system detects that the vehicle is laterally approaching or crossing the lane markings. The alert may be visual, audible, and/or haptic in

[37] The study uses the term ''impacts'' but for consistency purposes, NCAP uses the term ''crashes'' in this paragraph.

[38] The Agency notes that the highest number of serious injuries (*i.e.,* MAIS 3–5 injuries) were recorded for lane keeping crashes (21,282 or 0.76 percent of all non-fatal injuries), followed by rear-end crashes (17,918 or 0.64 percent), forward pedestrian crashes (5,973 or 0.21 percent), blind spot crashes (3,476 or 0.12 percent), and backing crashes (454 or 0.02 percent).

[39] Similarly, the study uses the term ''impacts'' but for consistency purposes, NCAP uses the term ''crashes'' in this paragraph.

[40] 49 CFR 571.111. *See* 79 FR 19177 (Apr. 07, 2014).

[41] Wiacek, C., Fikenscher, J., Forkenbrock, G., Mynatt, M., & Smith, P. (2017), Real-world analysis of fatal run-out-of-lane crashes using the National Motor Vehicle Crash Causation Survey to assess lane keeping technologies, *25th International Conference on the Enhanced Safety of Vehicles,* Detroit, Michigan. June 2017, Paper Number 17–0220.

[42] The National Motor Vehicle Crash Causation Survey (NMVCS) was a nationwide survey of 5,471 crashes involving light passenger vehicles, with a focus on factors related to pre-crash events, which were investigated by the U.S. Department of Transportation and NHTSA over a 2.5-year period from July 3, 2005, to December 31, 2007.

[43] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[44] When only serious injuries (*i.e.,* MAIS 3–5 injuries) were considered, lane keeping crashes represented the highest number of non-fatal injuries (21,282 or 0.76 percent of all non-fatal injuries), followed by rear-end crashes (17,918 or 0.64 percent), forward pedestrian crashes (5,973 or 0.21 percent), blind spot crashes (3,476 or 0.12 percent), and backing crashes (454 or 0.02 percent).

[45] 73 FR 40016 (July 11, 2008).

[46] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[47] Note that performance of LDW systems may be adversely affected by precipitation or poor roadway conditions due to construction, unmarked intersections, faded/worn/missing lane markings, markings covered with water, etc.

nature. Visual alerts may show which side of the vehicle is departing the lane, and haptic alerts may be presented as steering wheel or seat vibrations to alert the driver. It is expected that an LDW alert will warn the driver of the unintentional lane shift so the driver can steer the vehicle back into its lane. When a turn signal is activated, the LDW system acknowledges that the lane change is intentional and does not alert the driver.

As NHTSA continues its assessment of LDW systems under NCAP, it plans to use the current NCAP test procedure titled, ''Lane Departure Warning System Confirmation Test and Lane Keeping Support Performance Documentation,'' dated February 2013.[48] This protocol assesses the system's ability to issue an alert in response to a driving situation intended to represent an unintended lane departure and to quantify the test vehicle's position relative to the lane line at the time of the LDW alert. In NCAP's LDW tests, a test vehicle is accelerated from rest to a test speed of 72.4 kph (45 mph) while travelling in a straight line parallel to a single lane line comprised of one of three marking types: Continuous white lines, discontinuous (*i.e.,* dashed) yellow lines, or discontinuous raised pavement markers (*i.e.,* Botts' Dots). The test vehicle is driven such that the centerline of the vehicle is approximately 1.8 m (6 ft.) from the lane edge. This path must be maintained, and the test speed must be achieved, at least 61.0 m (200 ft.) prior to the start gate. Once the driver reaches the start gate, he or she manually inputs sufficient steering to achieve a lane departure with a target lateral velocity of 0.5 m/s (1.6 ft./s) with respect to the lane line. The driver of the vehicle does not activate the turn signal at any point during the test and does not apply any sudden inputs to the accelerator pedal, steering wheel, or brake pedal. The test vehicle is driven at constant speed throughout the maneuver. The test ends when the vehicle crosses at least 0.5 m (1.7 ft.) over the edge of the lane line marking. The scenario is performed for two different departure directions, left and right, and for all three lane marking types, resulting in a total of six test conditions. Five repeated trials runs are performed per test condition.

LDW performance for each test trial is evaluated by examining the proximity of the vehicle with respect to the edge of a lane line at the time of the LDW alert. The LDW alert must not occur when the lateral position of the vehicle, represented by a two-dimensional polygon,[49] is greater than 0.8 m (2.5 ft.) from the inboard edge of the lane line (*i.e.,* the line edge closest to the vehicle when the lane departure maneuver is initiated), and must occur before the lane departure exceeds 0.3 m (1 ft.). To pass the test, the LDW system must satisfy the pass criteria for three of the first five valid individual trials[50] for each combination of departure direction and lane line type (60 percent) and for 20 of the 30 trials overall (66 percent).

NCAP's LDW test conditions represent pre-crash scenarios that correspond to a substantial portion of fatalities and injuries observed in real-world lane departure crashes. In its independent review of the 2011–2015 FARS and GES data sets, Volpe showed that approximately 40 and 30 percent of fatalities in fatal road departure and opposite direction crashes, respectively, occurred when the posted speed was 72.4 kph (45 mph) or less.[51] Similarly, the data indicated 64 and 63 percent of injuries resulted from road departure and opposite direction crashes, respectively, that occurred when the posted speed was 72.4 kph (45 mph) or less.

Although travel speed was unknown or not reported for a high percentage of crashes in FARS and GES,[52] when travel speed was reported, approximately 6 and 9 percent of fatal road departure and opposite direction crashes, respectively, occurred at travel speeds of 72.4 kph (45 mph) or less. Likewise, the data showed 22 and 25 percent of the police-reported non-fatal road departure and opposite direction crashes, respectively, occurred at 72.4 kph (45 mph) or less. Volpe's data review indicates that speeding is prevalent in lane departure relevant pre-crash scenarios, but most road departure- and opposite direction-related fatalities and injuries did not occur on highways. For instance, 79 percent of road departure-related fatal crashes and 89 percent of road departure-related police-reported injuries occurred on roads that were not highways. Similarly, for opposite direction-related crashes, 87 percent of fatalities and 98 percent of injuries did not occur on highways. Because highway driving speeds are on average much higher than non-highway speeds, the Volpe data about a high percentage of crashes occurring at speeds under 72.4 kph (45 mph) appears accurate. The test speed of 72.4 kph (45 mph) appears to address a large portion of the travel speeds where the crashes are occurring.

Furthermore, 62 percent of road departure-related fatalities and 76 percent of road departure-related injuries occurred on straight roads, thereby aligning with NCAP's test procedure. For opposite direction-related crashes, 69 percent of fatalities and 67 percent of police-reported injuries occurred on straight roads.

In its December 2015 notice,[53] NHTSA expressed concern that the safety benefits afforded by LDW technology were being diminished due to false activations. Several studies referenced in that notice had found that drivers were choosing to disable their vehicle's LDW system because it was issuing alerts too frequently. The Agency was also concerned about missed detections resulting from tar lines reflecting sun light or covered with water and other unforeseen anomalies that cause unreliable driver warnings. To address these issues and improve consumer acceptance, NHTSA requested comment in 2015 on whether to revise certain aspects of NCAP's LDW test procedure. Specifically, the Agency solicited comment on whether it is feasible to (1) award NCAP credit to LDW systems that only provide haptic alerts, and (2) develop additional test scenarios to address false activations and missed detections. The Agency also proposed to tighten the inboard lane tolerance for its LDW test procedure from 0.8 to 0.3 m (2.5 to 1.0 ft.). In doing this, an LDW alert could only occur within a window of +0.3 to −0.3 m (+1.0 to −1.0 ft.) with respect to the inside edge of the lane line to pass NCAP's LDW procedure. This proposal effectively increased the space in which a vehicle could operate within a lane before triggering of an LDW alert was permitted. Each of these topics are

[48] National Highway Traffic Safety Administration. (2013, February). *Lane departure warning system confirmation test and lane keeping support performance documentation.* See *http://www.regulations.gov,* Docket No. NHTSA–2006–26555–0135.

[49] The two-dimensional polygon is defined by the vehicle's axles in the X-direction (fore-aft), the outer edge of the vehicle's tire in the Y-direction (lateral), and the ground in the Z-direction (vertical).

[50] Trial or test trial is a test among a set of tests conducted under the same test conditions (including test speed) with the same subject vehicle.

[51] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[52] For road departure crashes, 63 and 68 percent of the travel speed data, respectively, is unknown or not reported in FARS and GES. For opposite direction crashes, 65 and 67 percent of the data, respectively, is unknown or not reported in FARS and GES.

[53] 80 FR 78522 (Dec. 16, 2015).

discussed in detail in the sections that follow.

a. Haptic Alerts

With respect to haptic warnings, NHTSA mentioned in its December 2015 notice that these alerts may offer greater consumer acceptance compared to audible alerts, and thus improve the effectiveness of LDW alerts if the driver does not view the alerts as a nuisance and disengage the system. In response to the notice, commenters generally did not support a haptic alert requirement. Some commenters suggested that requiring a specific feedback type would unnecessarily limit the manufacturer's flexibility to issue warnings to the driver, particularly when considering the potential effectiveness of different feedback types and the need to optimize human-machine interface (HMI) designs to address a suite of ADAS. Bosch suggested the Agency should allow all warning options to promote the availability of such systems in a greater number of vehicles, which should ultimately increase consumer awareness and encourage vehicle safety improvements. Advocates stated that the Agency should provide details on the effectiveness of the different types of sensory feedback (visual, auditory, haptic) to justify its decision to encourage one warning type over another. Consumers Union (CU) suggested awarding credit for all LDW feedback types and awarding additional points or credit for haptic alerts to encourage this feedback type in the future. The Automotive Safety Council (ASC) acknowledged that haptic warnings may improve driver acceptance of LDW systems but suggested that false activations must also be reduced to realize improved consumer acceptance and additional safety benefits.

In a large-scale telematics-based study conducted by UMTRI [54] for NHTSA on LDW usage, researchers investigated driver behavior in reaction to alerts. Two types of vehicles were included in the study: Vehicles with audible-only alerts and vehicles where the driver had the option to select either an audible or haptic alert. When the latter was available, the driver selected the haptic warning 90 percent of the time. Otherwise, the LDW system was turned ''off'' 38 percent of the time and thus was not providing alerts. For the system that only provided the audible warning, the LDW was turned ''off'' 71 percent of the time.

Based on the findings from the UMTRI's research, NHTSA concludes that haptic alerts improve driver acceptance of LDW systems. However, the Agency is not certain if an increase in driver acceptance will translate to an improvement in the overall efficacy of the LDW system in reducing crashes. Furthermore, NHTSA does not want to hinder optimization of HMI designs given the increasing number of ADAS technologies available in vehicles today. Therefore, the Agency has decided not to require a specific alert modality for LDW warnings in its related NCAP test procedure at this time, but is requesting comment on whether this decision is appropriate. Although NHTSA has limited data on the effectiveness of the various alert types, it has some concern (similar to the one raised for FCW) that certain LDW systems, such as those that may provide only a visual alert, may be less effective than other alert options in medium or high urgency situations.[55]

b. False Positive Tests

In responding to the 2015 RFC, vehicle manufacturers and suppliers asserted that additional false positive test requirements were not needed even though they acknowledged NHTSA's concern regarding the effect of nuisance alerts on consumer acceptance. Specifically, the Alliance [56] stated that vehicle manufacturers will optimize their systems to minimize false positive activations for consumer acceptance purposes, and thus such tests will not be necessary. Similarly, Honda stated that vehicle manufacturers must already account for false positives when considering marketability and HMI. The manufacturer also indicated that it would be difficult for the Agency to create a valid false positive test procedure that is robust and repeatable. Mobileye, Bosch, and MTS Systems Corporation (MTS) also agreed. In fact, Mobileye explained that it would be hard to reproduce the exact test conditions, especially with respect to weather, over multiple test locations. Also, Bosch stated that the specialized tests required to address the Agency's concern may not be truly representative of all real-world driving situations that the system encounters. MTS suggested that, alternatively, a new test could be added to NCAP's LDW test procedure that would evaluate whether an LDW system can inform the driver that it is no longer able to issue warnings due to poor environmental conditions or other reasons.

Given the concerns expressed regarding repeatability and reproducibility of test conditions, and the fact that the Agency's data do not currently support adoption of a false positive assessment for lane keeping technologies, NHTSA continues to monitor the consumer complaint data related to false positives to help inform an appropriate next step.

With respect to the recommendation from MTS, the Agency recognizes that vehicle manufacturers install LDW telltales on the instrument panel that illuminate to inform drivers when the system is operational. The systems are typically operational when the vehicle's travel speed has reached a preset activation threshold speed and the lane markings and environmental conditions are appropriate. The telltale will disappear if those conditions are not met to inform the driver that the system is no longer operational. In such a state, the system will not provide an alert if the vehicle departs the travel lane. Given this feature, NHTSA has decided a test to inform the driver that the system is no longer issuing warnings is unnecessary at this time.

c. LDW Test Procedure Modifications

Support was varied with respect to NHTSA's proposal in the December 2015 notice to modify the LDW test requirements to reduce the leeway for system activation inside of a lane line from 0.8 to 0.3 m (2.5 to 1.0 ft.). Global Automakers stated that the proposed change was ''unduly prescriptive'' and recommended that the Agency retain the existing lane line tolerance. The organization explained that research showed 90 percent of drivers needed 1.2 s to react to a warning.[57] Citing NCAP's LDW test procedure, which requires a steering input having a target lateral velocity of 0.5 to 0.6 m/s (1.6 to 2 ft./s), the trade association remarked that this requirement equates to a necessary warning distance of 0.6 to 0.72 m (1.9 to 2.4 ft.) to ensure that 90 percent of drivers can react in time to prevent a

[54] Flannagan, C., LeBlanc, D., Bogard, S., Nobukawa, K., Narayanaswamy, P., Leslie, A., Kiefer, R., Marchione, M., Beck, C., and Lobes, K. (2016, February), *Large-scale field test of forward collision alert and lane departure warning systems* (Report No. DOT HS 812 247), Washington, DC: National Highway Traffic Safety Administration.

[55] Lerner, N., Robinson, E., Singer, J., Jenness, J., Huey, R., Baldwin, C., & Fitch, G. (2014, September), *Human factors for connected vehicles: Effective warning interface research findings* (Report No. DOT HS 812 068), Washington, DC: National Highway Traffic Safety Administration.

[56] After submitting individual comments on the 2015 RFC, the Alliance and Global Automakers merged to form the Alliance for Automotive Innovation. This document addresses the individual comments from the organizations that were then the Alliance and Global Automakers.

[57] Tanaka, S., Mochida, T., Aga, M., & Tajima, J. (2012, April 16). Benefit Estimation of a Lane Departure Warning System using ASSTREET. *SAE Int. J. Passeng. Cars—Electron. Electr. Syst.* 5(1):133–145, 2012, *https://doi.org/10.4271/2012-01-0289.*

lane departure. Advocates agreed that nuisance notifications are a concern for driver acceptance, but noted that the Agency provided little information about the effectiveness of LDW systems meeting the proposed criteria. Conversely, Delphi, ASC, and MTS commented that some of the more robust systems that are currently available should be able to comply with the narrower specification. However, ASC suggested that the Agency may want to evaluate the impact of the proposed changes before finalizing the requirements to ensure that narrowing the lane line tolerances translates to a reduction in false positive alerts, and thus higher consumer acceptance for LDW systems. Mobileye stated that the tolerance reduction should increase the required accuracy and quality of lane keeping systems. MTS remarked that systems meeting the tighter specification will produce higher driver satisfaction, and, in turn, system use, compared to those that meet only the current requirements. Hyundai Motor Company (Hyundai) also supported the tolerance revision. Consumers Union (CU) agreed with others that the narrowed lateral tolerance should reduce the issuance of false alerts on main roadways but cautioned the Agency that this change may not effectively address false alerts on secondary or curved roads, as vehicles not only tend to approach within one foot of lane lines, but also may cross them. The group suggested that false alert conditions be subject to speed limitations or GPS-based position sensors to avoid ''over activation'' on secondary or curved roads.

Given NHTSA's goal of reducing nuisance notifications to increase consumer acceptance of LDW systems and the statements from several commenters that current LDW systems can meet the proposed reduced test specification, the Agency believes it is reasonable to propose adopting the reduced inboard lane tolerance of 0.3 m (1.0 ft.).

In addition to the comments received pertaining to the lane line tolerance, the Agency also received several suggestions to adopt additional test scenarios for NCAP's LDW test procedure or make alternative procedural modifications. Similar to CU's suggestion above for curved roads, Mobileye suggested that NHTSA add inner and outer curve scenarios that allow a larger tolerance for the inner lane boundary than that permitted on a straight road. The company further recommended that the Agency add road edge detection scenarios, including curbs and non-structural delimiters such as gravel or dirt, to reflect real-world conditions and crash scenarios more accurately. Similarly, Bosch suggested that NHTSA consider introducing road edge detection requirements in addition to lane markings since not all roads have lane markings. Additionally, Mobileye suggested that NHTSA alter the Botts' Dots detail #4 (Botts dots are round, raised markers that mark lanes) to align with California detail #13, which is more common, and modify the test procedure to include Botts' Dots on both sides of the lane or Botts' Dots and a solid line, as these are the most frequently observed marking pairings.

The Agency appreciates suggestions from commenters and agrees that there is merit to considering other procedural modifications for NCAP's lane departure test procedure(s). As will be discussed in the next section, the Agency is planning to conduct a feasibility study to determine whether curved roads can be considered for inclusion in NCAP test procedures to evaluate LKS systems objectively. NHTSA also plans to perform research to assess how lane keeping system performance on a test track compares to real-world data for different combinations of curve radius, vehicle speed, and departure timing. Additionally, the Agency recognizes that the European NCAP program (Euro NCAP) has adopted a road edge detection test that is conducted in a similar manner to their ''lane keep assist'' tests (described in the next section), but the road edge detection test does not use lane markings. Although NHTSA believes the number of vehicles equipped with an ability to recognize and respond to road edges not defined with a lane line is presently low, it has identified roadways where this capability could prevent crashes. Therefore, the Agency is requesting comment on whether a road edge detection test for either LDW and/or LKS is appropriate for inclusion in NCAP. In consideration of the lane markings currently assessed, the Agency proposes to remove the Botts' Dots test scenario from the current LDW test, as the lane marking type is being removed from use in California.[58] At this time, the Agency believes the traditional dashed and solid lane marking tests would be sufficient.

Although NHTSA has tentatively decided not to adopt additional false activation requirements for this NCAP upgrade, the Agency is still concerned about the low effectiveness of LDW and its lack of consumer acceptance stemming from nuisance alerts and missed detections.

When NHTSA decided to include ADAS in the NCAP program in 2008,[59] LDW was selected because it met NCAP's four established criteria: (1) The technology addressed a major crash problem; (2) the system design of LDW had the potential to mitigate the crash problem; (3) safety benefits were projected, and (4) test procedures and evaluation criteria were available to ensure an acceptable performance level. At the time, the Agency estimated that existing LDW systems were 6 to 11 percent effective in preventing lane departure crashes. Although the system's effectiveness was relatively low, NHTSA cited the large number of road departure and opposite direction crashes occurring on the nation's roadways as well as the resulting AIS 3+ injuries, as reasons to include LDW in NCAP. Several recent studies have provided varying results with respect to LDW effectiveness.

In a 2017 study,[60] the Insurance Institute for Highway Safety (IIHS) concluded that LDW systems were effective in reducing three types of passenger car crashes (single-vehicle, side-swipes, and head-on) by 11 percent, which is the same rate NHTSA originally estimated. Importantly, IIHS also concluded that LDW systems reduce injuries in those same types of crashes by 21 percent. In its recent study of real-world effectiveness of crash avoidance technologies in GM vehicles,[61] UMTRI found that LDW systems showed a 3 percent reduction for applicable crashes that was determined to be not statistically significant. Conversely, the active safety technology, LKS (which also included lane departure warning capability), showed an estimated 30 percent reduction in applicable crashes.

Other studies that examined driver deactivation rates also suggest that LDW effectiveness may be lower than originally estimated. In a survey of Honda vehicles brought into Honda

[58] Winslow, J. (2017, May 19), Botts' Dots, after a half-century, will disappear from freeways, highways, *The Orange County Register, https://www.ocregister.com/2017/05/19/botts-dots-after-a-half-century-will-disappear-from-freeways-highways/.*

[59] 73 FR 40033 (July 11, 2008).

[60] Insurance Institute for Highway Safety (2017, August 23), *Lane departure warning, blind spot detection help drivers avoid trouble, https://www.iihs.org/news/detail/stay-within-the-lines-lane-departure-warning-blind-spot-detection-help-drivers-avoid-trouble.*

[61] Flannagan, C. and Leslie, A., Crash Avoidance Technology Evaluation Using Real-World Crashes, DTHN2216R00075 Vehicle Electronics Systems Safety IDIQ, The University of Michigan Transportation Research Institute Final Report, March 22, 2018.

dealerships for service,[62] IIHS researchers found that for 184 models equipped with an LDW system, only a third of the vehicles had the system activated. Furthermore, in its telematics-based study on LDW usage,[63] UMTRI found that, overall, drivers turned off LDW systems 50 percent of the time. However, in Consumer Reports' August 2019 survey of more than 57,000 CR subscribers, the organization found that 73 percent of vehicle owners reported that they were satisfied with LDW technology. In fact, 33 percent said that the system had helped them avoid a crash, and 65 percent said that they trusted the system to work every time.[64]

In light of these findings, the Agency believes that, in addition to LDW, there is merit to adopting an active lane keeping system, such as lane keeping support (LKS), in NCAP. As an enhanced active system, LKS offers the steering and/or braking capability necessary to guide a vehicle back into its lane without consumer action and should therefore further enhance safety benefits beyond those that can be realized by LDW. A detailed discussion pertaining to LKS technology is provided in the following section.

2. Adding Lane Keeping Support (LKS)

LDW systems warn a driver that their vehicle is unintentionally drifting out of their travel lane, while lane keeping support (LKS) systems are designed to actively guide a drifting vehicle back into the travel lane by gently counter steering or applying differential braking. During an unintended lane departure where the driver is not using the turn signal, LKS systems help to prevent: ''Sideswiping'' where a vehicle strikes another vehicle in an adjacent lane that is travelling in the same direction; opposite direction crashes where a vehicle crosses the centerline and strikes another vehicle travelling in the opposite direction; and road departure crashes where a vehicle runs off the road resulting in a rollover crash or an impact with a tree or other object. LKS systems may also help to prevent unintended lane departures into designated bicycle lanes in situations where the system's speed threshold is met.

LKS systems typically utilize the same camera(s) used by LDW systems to monitor the vehicle's position within the lane, and determine whether a vehicle is about to drift out of its lane of travel unintentionally. In such instances, LKS automatically intervenes by: Braking one or more of the vehicle's wheels; steering; or using a combination of braking and steering so that the vehicle returns to its intended lane of travel. LKS is one of two active lane keeping technologies mentioned in the Agency's March 2019 report,[65] with the other being lane centering assist (LCA). LKS assists the driver by providing short-duration steering and/or braking inputs when a lane departure is imminent or underway, whereas LCA provides continuous assistance to the driver to keep their vehicle centered within the lane.

As discussed in the previous section, UMTRI evaluated the real-world effectiveness of ADAS technologies, including LDW and LKS.[66] The results of the LKS study (which also included lane departure warning functionality) showed an estimated 30 percent reduction in applicable crashes. Additionally, in its August 2019 survey, 74 percent of vehicle owners reported that they were satisfied with LKS technology, and 35 percent said that it had helped them avoid a crash. Sixty-five percent of owners said that they trusted the system to work every time.[67]

In its December 2015 notice, NHTSA did not propose including LKS technology as part of the update to NCAP. However, many commenters recommended that the Agency consider including the technology. For instance, Bosch and Mobileye stated that LKS systems have the potential to prevent or mitigate a greater number of collisions involving injuries and fatalities than LDW systems. The ASC and Delphi recommended that the Agency adopt LKS in lieu of LDW, with the ASC adding that Euro NCAP has included LKS in its Lane Support Systems test protocol since 2016.[68] [69] The ASC, Bosch, and Continental noted the maturity of LKS technology and stated that such systems were already widely available in vehicles produced at the time. Other proponents of adopting LKS technology in NCAP include the National Safety Council (NSC), ZF TRW, and Honda. ZF TRW recommended that the Agency adopt both active lane keeping (termed LKS in this notice) and lane centering systems (termed LCA in this notice) due to the high frequency of fatal road departure crashes. Honda also supports the active safety benefits of LKS and the system's potential to help prevent crashes. NSC suggested that the Agency include LKS, as it would complement LDW, which is already in the program, similar to the way the warning component of FCW complements the active safety functionality of AEB.

As mentioned previously, the Agency agrees with commenters that there is merit to adopting LKS technology in NCAP. However, NHTSA believes an LDW system integrated with LKS may be a better approach for the Agency to consider rather than replacing LDW with LKS. NHTSA believes, as NSC commented, that an integrated approach (inclusive of passive and active safety capabilities for lane support systems) would be similar to what the Agency is proposing for frontal collision avoidance systems, FCW and AEB, later in this notice.

NHTSA is considering the adoption of certain test methods (*e.g.,* those for ''lane keep assist'') contained within the Euro NCAP Test Protocol—Lane Support Systems (LSS) [70] to assess technology design differences for LKS. Since the test speeds and road configurations specified in this protocol are similar to those stipulated in the Agency's LDW test procedure, the Agency believes Euro NCAP's test protocol will sufficiently address the lane keeping crash typology previously detailed for LDW.

Euro NCAP's LSS test procedure includes a series of ''lane keep assist''

[62] Insurance Institute for Highway Safety (2016, January 28), Most Honda owners turn off lane departure warning, *Status Report, Vol. 51, No. 1,* page 6.

[63] Flannagan, C., LeBlanc, D., Bogard, S., Nobukawa, K., Narayanaswamy, P., Leslie, A., Kiefer, R., Marchione, M., Beck, C., and Lobes, K. (2016, February), *Large-scale field test of forward collision alert and lane departure warning systems* (Report No. DOT HS 812 247), Washington, DC: National Highway Traffic Safety Administration.

[64] Consumer Reports (2019, August 5), *Guide to lane departure warning & lane keeping assist: Explaining how these systems can keep drivers on the right track, https://www.consumerreports.org/car-safety/lane-departure-warning-lane-keeping-assist-guide/.*

[65] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[66] Carol Flannagan, Andrew Leslie, Crash Avoidance Technology Evaluation Using Real-World Crashes, DTHN2216R00075 Vehicle Electronics Systems Safety IDIQ, The University of Michigan Transportation Research Institute Final Report, March 22, 2018.

[67] Consumer Reports. (2019, August 5), *Guide to lane departure warning & lane keeping assist: Explaining how these systems can keep drivers on the right track, https://www.consumerreports.org/car-safety/lane-departure-warning-lane-keeping-assist-guide/.*

[68] The ASC argued that data from the Highway Loss Data Institute (HLDI) have shown no statistically significant difference in collision claim frequencies for vehicles equipped with LDW compared to those without, and questioned whether LDW systems are effective in reducing crashes or fatalities.

[69] European New Car Assessment Programme (Euro NCAP) (2015, November), *Test Protocol—Lane Support Systems, Version 1.0.*

[70] European New Car Assessment Programme (Euro NCAP) (2019, July), *Test Protocol—Lane Support Systems, Version 3.0.2.* See section 7.2.5, Lane Keep Assist tests.

trials that are performed with iteratively increasing lateral velocities towards the desired lane line. Each ''lane keep assist'' trial begins with the subject vehicle (SV) (*i.e.,* the vehicle being evaluated) being driven at 72 kph (44.7 mph) down a straight lane delineated by a single solid white or dashed white line. Initially, the SV path is parallel to the lane line, with an offset from the lane line that depends on the lateral velocity used later in the maneuver. Then, after a short period of steady-state driving, the direction of travel of the SV is headed towards the lane line using a path defined by a 1,200 m (3,937.0 ft.) radius curve. The lateral velocity of the SV's approach towards the lane line (from both the left and right directions) is increased from 0.2 to 0.5 m/s (0.7 to 1.6 ft./s) in 0.1 m/s (0.3 ft./s) increments until acceptable LKS performance is no longer realized. Acceptable LKS performance occurs when the SV does not cross the inboard leading edge of the lane line by more than 0.3 m (1.0 ft.).

NHTSA conducted a limited assessment of five model year 2017 vehicles equipped with LKS systems. The Agency used a robotic steering controller to maximize the repeatability and minimize variability associated with manual steering inputs. For this study, NHTSA also used a slightly modified and older version of Euro NCAP's LSS test procedure from what was discussed above. Specifically, the lateral velocity of the SV's approach towards the lane line was increased from 0.1 m/s to 1.0 m/s in 0.1 m/s increments (0.3 ft./s to 3.3 ft./s in 0.3 ft./s increments) to assess how LKS systems would perform at higher velocities. In addition, LKS performance was considered acceptable (when compared to Euro NCAP's assessment criteria at the time of NHTSA's testing) for instances where the SV did not cross the inboard leading edge of the lane line by more than 0.4 m (1.3 ft.).[71]

A preliminary analysis of the five tested vehicles identified performance differences between the vehicles depending on the lateral velocity used during the test. Some vehicles only engaged a steering response at lower lateral velocities and others continued to provide a steering input as the lateral velocity was increased.[72] The maximum excursion over the lane marking after an LKS activation was also found to be inconsistent, particularly as lateral velocity increased. These preliminary findings suggested that there are performance differences in how vehicle manufacturers are designing their systems for a given set of operating conditions.

The results from these tests, as measured by the maximum excursions over the lane marking, were compared to the measured shoulder width of roads where fatal road departure crashes occurred. The analysis identified roadways where the shoulder width of the roadway was less than the 0.4 m (1.3 ft.) maximum excursion limit (*e.g.,* certain rural roadways) used in the Agency's testing. It was observed that only vehicles displaying robust LKS performance, including at higher lateral velocities, would likely prevent the vehicle from departing the travel lane on these roadways. However, most of the roadway departure crashes were on roads where the shoulder width exceeded 0.4 m (1.3 ft.). On these roadways, assuming the LKS was engaged, the lane departure could have been avoided. However, some vehicles did not perform well, with several exhibiting no system intervention, and others exceeding the maximum excursion limit as the lateral velocity was increased. To supplement these initial findings, additional LKS testing has since been conducted and is undergoing analysis.

Since the analysis showed that most fatal crashes identified in the study were on roadways having shoulder widths that exceeded the current Euro NCAP test excursion limit of 0.3 m (1.0 ft.), NHTSA believes that adopting the Euro NCAP criterion may provide significant safety benefits, but is requesting comment on whether an even smaller excursion limit may be more appropriate. Furthermore, as the study also identified fatal crashes where lane markers were not present on the side of the roadway where a departure occurred (such that LKS would not provide any benefit unless it had the capability to identify the edge of the roadway), the Agency is also requesting comment (as mentioned previously) on adding Euro NCAP's road edge detection test to NCAP so that it may begin to address crashes that occur where lane markings may not be present.

Based on the findings from NHTSA's LKS testing, which showed differences in LKS performance at greater lateral velocities, the Agency is concerned about LKS performance at higher travel speeds when the vehicle first transitions from a straight to a curved road where lateral velocity may inherently be high. In its independent analysis of the 2011–2015 FARS data set, Volpe found that 29 percent of fatal road departure crashes and 26 percent of fatal opposite direction crashes occurred at known travel speeds exceeding 72.4 kph (45 mph). The analysis also showed that 55 percent of fatal road departure crashes and 67 percent of opposite direction crashes occurred on roads with posted speeds exceeding 72.4 kph (45 mph).[73] [74] Furthermore, the study revealed that speeding was a factor in 31 percent and 13 percent of fatal road departure and opposite direction crashes, respectively.[75] Since NHTSA does not currently have data to show that LKS system performance at Euro NCAP's current test speed of 72 kph (44.7 mph) would be indicative of system performance when tested at higher speeds, NHTSA is requesting comment on whether it would be beneficial to incorporate additional, higher test speeds to assess the performance of lane keeping systems in NCAP.

To date, NHTSA has only performed test track LKS evaluations using the straight road test configuration specified in the Euro NCAP test procedure. However, the Agency recognizes that a significant portion of road departure and opposite direction crashes resulting in fatalities and injuries occur on curved roads. A review of Volpe's 2011–2015 data set[76] showed that for road departure crashes, 37 percent of fatalities and 20 percent of injuries occurred on curved roads. For opposite direction crashes, 30 percent of fatalities and 31 percent of injuries occurred on curved roads. NHTSA is not certain how LKS performance observed during straight road trials performed on a test

[71] At the time of testing, an older version of Euro NCAP's LSS test procedure was available. This version stipulated a lane keep assist assessment criterion of 0.4 m (1.3 ft.) for the maximum excursion over the inside edge of the lane marking. European New Car Assessment Programme (Euro NCAP). See *Assessment Protocol—Safety Assist, Version 7.0* (2015, November).

[72] Wiacek, C., Forkenbrock, G., Mynatt, M., & Shain, K. (2019), Applying lane keeping support test track performance to real-world crash data, *26th Enhanced Safety of Vehicles Conference,* Eindhoven, Netherlands. June 2019, Paper Number 19–0208.

[73] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[74] For data where the travel speed was known, 63 and 65 percent of the data is unknown or not reported in FARS for road departure and opposite direction crashes, respectively. For road departure and opposite direction crashes, respectively, 3 and 1 percent of the posted speed data is unknown or not reported in FARS.

[75] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[76] Ibid.

track would correlate to real-world system performance on curved roads. However, NHTSA believes, based on on-road performance testing experience of newer model year vehicles, that some current system designs include provisions to address lane departures on curved roads. The Agency observed that some LKS systems engage by providing limited operation throughout a curve—which may offer little (if any) safety benefits. However, other more sophisticated LKS systems maintain engagement longer and offer more directional authority throughout a curve. These systems may provide additional safety gains because the driver has more time to re-engage (*i.e.,* restore effective manual control of the vehicle).

In NHTSA's study of the 2005 through 2007 fatal crashes [77] from NMVCCS, crashes that occurred on curved roads [78] where the driver departed the travel lane were analyzed. The analysis showed that, unlike for straight roads where LKS systems may provide smaller corrective steering inputs to prevent the vehicle from departing the lane, LKS systems would have to provide sustained lateral correction (*i.e.,* corrective steering) on a curved road to prevent the vehicle from departing the lane.

Furthermore, in fleet testing of select model year 2012 through 2018 vehicles equipped with LDW and LKS (referenced in the report as LKA), Transport Canada [79] found variability in test results and generally unpredictable system behavior on curved roads. Thus, Transport Canada stated that it was not possible to gather enough data to assess the potential safety benefits associated with the technology.

To address these unknowns and further understand the potential effectiveness of LKS systems in the real world, the Agency is considering additional research to study whether testing on curved roads should be considered for objective evaluation of LKS systems, and collect a combination of test track and real-world data to quantify how LKS systems will operate when exposed to different combinations of curve radius, vehicle speed, and departure timing (*e.g.,* at curve onset or midway through the curve).

With respect to LDW and LKS, NHTSA is seeking comment on the following:

(1) Should the Agency award credit to vehicles equipped with LDW systems that provide a passing alert, regardless of the alert type? Why or why not? Are there any LDW alert modalities, such as visual-only warnings, that the Agency should not consider acceptable when determining whether a vehicle meets NCAP's performance test criteria? If so, why? Should the Agency consider only certain alert modalities (such as haptic warnings) because they are more effective at re-engaging the driver and/or have higher consumer acceptance? If so, which one(s) and why?

(2) If NHTSA were to adopt the lane keeping assist test methods from the Euro NCAP LSS protocol for the Agency's LKS test procedure, should the LDW test procedure be removed from its NCAP program entirely and an LDW requirement be integrated into the LKS test procedure instead? Why or why not? For systems that have both LDW and LKS capabilities, the Agency would simply turn off LKS to conduct the LDW test if both systems are to be assessed separately. What tolerances would be appropriate for each test, and why?

(3) LKS system designs provide steering and/or braking to address lane departures (*e.g.,* when a driver is distracted).[80] To help re-engage a driver, should the Agency specify that an LDW alert must be provided when the LKS is activated? Why or why not?

(4) Do commenters agree that the Agency should remove the Botts' Dots test scenario from the current LDW test procedure since this lane marking type is being removed from use in California? [81] If not, why?

(5) Is the Euro NCAP maximum excursion limit of 0.3 m (1.0 ft.) over the lane marking (as defined with respect to the inside edge of the lane line) for LKS technology acceptable, or should the limit be reduced to account for crashes occurring on roads with limited shoulder width? If the tolerance should be reduced, what tolerance would be appropriate and why? Should this tolerance be adopted for LDW in addition to LKS? Why or why not?

(6) In its LSS Protocol, Euro NCAP specifies use of a 1,200 m (3,937.0 ft.) curve and a series of increasing lateral offsets to establish the desired lateral velocity of the SV towards the lane line it must respond to. Preliminary NHTSA tests have indicated that use of a 200 m (656.2 ft.) curve radius provides a clearer indication of when an LKS intervention occurs when compared to the baseline tests performed without LKS, a process specified by the Euro NCAP LSS protocol. This is because the small curve radius allows the desired SV lateral velocity to be more quickly established; requires less initial lateral offset within the travel lane; and allows for a longer period of steady state lateral velocity to be realized before an LKS intervention occurs. Is use of a 200 m (656.2 ft.) curve radius, rather than 1,200 m (3,937.0 ft.), acceptable for inclusion in a NHTSA LKS test procedure? Why or why not?

(7) Euro NCAP's LSS protocol specifies a single line lane to evaluate system performance. However, since certain LKS systems may require two lane lines before they can be enabled, should the Agency use a single line or two lines lane in its test procedure? Why?

(8) Should NHTSA consider adding Euro NCAP's road edge detection test to its NCAP program to begin addressing crashes where lane markings may not be present? If not, why? If so, should the test be added for LDW, LKS, or both technologies?

(9) The LKS and ''Road Edge'' recovery tests defined in the Euro NCAP LSS protocol specify that a range of lateral velocities from 0.2 to 0.5 m/s (0.7 to 1.6 ft./s) be used to assess system performance, and that this range is representative of the lateral velocities associated with unintended lane departures (*i.e.,* not an intended lane change). However, in the same protocol, Euro NCAP also specifies a range of lateral velocities from 0.3 to 0.6 m/s (1.0 to 2.0 ft./s) be used to represent unintended lane departures during ''Emergency Lane Keeping—Oncoming vehicle'' and ''Emergency Lane Keeping—Overtaking vehicle'' tests. To encourage the most robust LKS system performance, should NHTSA consider a combination of the two Euro NCAP unintended departure ranges, lateral velocities from 0.2 to 0.6 m/s (0.7 to 2.0 ft./s), for inclusion in the Agency's LKS evaluation? Why or why not?

(10) As discussed above, the Agency is concerned about LKS performance on roads that are curved. As such, can the

[77] Wiacek, C., Fikenscher, J., Forkenbrock, G., Mynatt, M., & Smith, P. (2017), Real-world analysis of fatal run-out-of-lane crashes using the National Motor Vehicle Crash Causation Survey to assess lane keeping technologies, *25th International Technical Conference on the Enhanced Safety of Vehicles,* Detroit, Michigan. June 2017, Paper Number 17–0220.

[78] It should be noted that the paper identified crashes where lane markings were not present on the side of the departure.

[79] Meloche, E., Charlebois, D., Anctil, B., Pierre, G., & Saleh, A. (2019), ADAS testing in Canada: Could partial automation make our roads safer? *26th International Technical Conference on the Enhanced Safety of Vehicles,* Eindhoven, Netherlands, June 2019, Paper Number 19–0339.

[80] Cicchino, J.B. & Zuby, D.S. (2016, October), Prevalence of driver physical factors leading to unintentional lane departure crashes, *Traffic Injury Prevention,* 18(5), 481–487, *https://doi.org/10.1080/15389588.2016.1247446.*

[81] Winslow, J. (2017, May 19), Botts' Dots, after a half-century, will disappear from freeways, highways, *The Orange County Register, https://www.ocregister.com/2017/05/19/botts-dots-after-a-half-century-will-disappear-from-freeways-highways/.*

Agency correlate better LKS system performance at higher lateral velocities on straight roads with better curved road performance? Why or why not? Furthermore, can the Agency assume that a vehicle that does not exceed the maximum excursion limits at higher lateral velocities on straight roads will have superior curved road performance compared to a vehicle that only meets the excursion limits at lower lateral velocities on straight roads? Why or why not? And lastly, can the Agency assume the steering intervention while the vehicle is negotiating a curve is sustained long enough for a driver to re-engage? If not, why?

(11) The Agency would like to be assured that when a vehicle is redirected after an LKS system intervenes to prevent a lane departure when tested on one side, if it approaches the lane marker on the side not tested, the LKS will again engage to prevent a secondary lane departure by not exceeding the same maximum excursion limit established for the first side. To prevent potential secondary lane departures, should the Agency consider modifying the Euro NCAP ''lane keep assist'' evaluation criteria to be consistent with language developed for NHTSA's BSI test procedure to prevent this issue? Why or why not? NHTSA's test procedure states the SV BSI intervention shall not cause the SV to travel 0.3 m (1 ft.) or more beyond the inboard edge of the lane line separating the SV travel lane from the lane adjacent and to the right of it within the validity period. To assess whether this occurs, a second lane line is required (only one line is specified in the Euro NCAP LSS protocol for LKS testing). Does the introduction of a second lane line have the potential to confound LKS testing? Why or why not?

(12) Since most fatal road departure and opposite direction crashes occur at higher posted and known travel speeds, should the LKS test speed be increased, or does the current test speed adequately indicate performance at higher speeds, especially on straight roads? Why or why not?

(13) The Agency recognizes that the LKS test procedure currently contains many test conditions (*i.e.,* line type and departure direction). Is it necessary for the Agency to perform all test conditions to address the safety problem adequately, or could NCAP test only certain conditions to minimize test burden? For instance, should the Agency consider incorporating the test conditions for only one departure direction if the vehicle manufacturer provides test data to assure comparable system performance for the other direction? Or, should the Agency consider adopting only the most challenging test conditions? If so, which conditions are most appropriate? For instance, do the dashed line test conditions provide a greater challenge to vehicles than the solid line test conditions?

(14) What is the appropriate number of test trials to adopt for each LKS test condition, and why? Also, what is an appropriate pass rate for the LKS tests, and why?

(15) Are there any aspects of NCAP's current LDW or proposed LKS test procedure that need further refinement or clarification? Is so, what additional refinements or clarifications are necessary?

B. Blind Spot Detection Technologies

NHTSA's 2019 target population study showed that blind spot detection technologies such as blind spot warning (BSW), blind spot intervention (BSI), and lane change/merge warning (LCM) (which is essentially a BSI warning system), can help prevent or mitigate five pre-crash lane change/merge scenarios. These pre-crash movements represented, on average, 503,070 crashes annually, or 8.7 percent of all crashes that occurred on U.S. roadways, and resulted in 542 fatalities and 188,304 MAIS 1–5 injuries, as shown in Table A–3. This equated to 1.6 percent of all fatalities and 6.7 percent of all injuries recorded.[82]

Currently, NCAP does not include any ADAS technology that is designed to address blind spot pre-crash scenarios. NHTSA requested comment on the inclusion of BSW as part of its upgrade to the program in its 2015 notice. Although the Agency did not recommend BSI for inclusion at that time, the Agency is proposing that both BSW and BSI technologies be adopted as part of this program update.

Although the target population for blind spot detection technology may not be as large as the populations for AEB or lane keeping technologies, NHTSA believes there is merit to including blind spot technologies in NCAP. Consumer Reports found in its 2019 survey that 82 percent of vehicle owners were satisfied with BSW technology, 60 percent said that it had helped them avoid a crash, and 68 percent stated that they trusted the system to work every time.[83] The Agency believes the technology's high consumer acceptance rate, in addition to its potential safety benefits discussed later in this section, supports its inclusion in the Agency's signature consumer information program.

1. Adding Blind Spot Warning (BSW)

A BSW system is a warning-based driver assistance system designed to help the driver recognize that another vehicle is approaching, or being operated within, the blind spot of their vehicle in an adjacent lane. In these driving situations, and for all production BSW systems known to NHTSA, the BSW alert is automatically presented to the driver, and is most relevant to a driver who is contemplating, or who has just initiated, a lane change. Depending on the system design, additional BSW features may be activated if the system is presenting an alert and then the driver operates their turn signal indicator.

BSW systems use camera-, radar-, or ultrasonic-based sensors, or some combination thereof, as their means of detection. These sensors are typically located on the sides and/or rear of a vehicle. BSW alerts may be auditory, visual (most common), or haptic. Visual alerts are usually presented in the side outboard mirror glass, inside edge of the mirror housing, or at the base of the front a-pillars inside the vehicle. When another vehicle enters, or approaches, the driver's blind spot while operating in an adjacent lane, the BSW visual alert will typically be continuously illuminated. However, if the driver engages the turn signal in the direction of the adjacent vehicle while the visual alert is present, the visual alert may transition to a flashing state and/or be supplemented with an additional auditory or haptic alert (*e.g.,* beeping or vibration of the steering wheel or seat, respectively).

NHTSA requested comment on a draft research blind spot detection (BSD) test procedure (referred to in this notice as BSW) published on November 21, 2019[84] to assess systems' performance and capabilities in blind spot related pre-crash scenarios. This test procedure exercises the BSW system in two different scenarios on the test track: the Straight Lane Converge and Diverge Test, and the Straight Lane Pass-by Test. These two tests assess whether the BSW system displays a warning when other vehicles, referred to as principal other

[82] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[83] Monticello, M. (2017, June 29), *The positive impact of advanced safety systems for cars: The latest car-safety technologies have the potential to significantly reduce crashes,* Consumer Reports, *https://www.consumerreports.org/car-safety/positive-impact-of-advanced-safety-systems-for-cars/.*

[84] 84 FR 64405 (Nov. 21, 2019).

vehicles (POVs), are within the driver's blind spot. The test occurs without activation of the tested vehicle's, referred to as the subject vehicle (SV), turn signal. Neither the SV nor POV turn signals are to be activated at any point during any test trial. A short description of each test scenario and the requirements for a passing result is provided below:

• Straight Lane Converge and Diverge Test—The POV and SV are driven parallel to each other at a constant speed of 72.4 kph (45 mph) such that the front-most part of the POV is 1.0 m (3.3 ft.) ahead of the rear-most part of the SV in the outbound lanes of a three-lane straight road. After 2.5 s of steady-state driving, the POV enters (*i.e.,* converges into) the SV's blind zone [85] by making a single lane change into the lane immediately adjacent to the SV using a lateral velocity of 0.25 to 0.75 m/s (0.8 to 2.5 ft./s). The period of steady-state driving resumes for at least another 2.5 s and then the POV exits (*i.e.,* diverges from) the SV's blind zone by returning to its original travel lane using a lateral velocity of 0.25 to 0.75 m/s (0.8 to 2.5 ft./s). This test is repeated for a POV approach from both the left and the right side of the SV.

—To pass a test trial: during the converge lane change, the BSW alert must be presented by a time no later than 300 ms after any part of the POV enters the SV blind zone and must remain on while any part of the POV resides within the SV blind zone; and during the diverge lane change, the BSW alert may remain active only when the lateral distance between the SV and POV is greater than 3 m (9.8 ft.) but less than or equal to 6 m (19.7 ft.). The BSW alert shall not be active once the lateral distance between the SV and POV exceeds 6 m (19.7 ft.).

• Straight Lane Pass-by Test—The POV approaches and then passes the SV while being driven in an adjacent lane. For each trial, the SV is traveling at a constant speed of 72.4 kph (45 mph) whereas the POV is traveling at one of four constant speeds—80.5, 88.5, 96.6, or 104.6 kph (50, 55, 60, or 65 mph). The lateral distance between the two vehicles, defined as the closest lateral distance between adjacent sides of the polygons used to represent each vehicle, shall nominally be 1.5 m (4.9 ft.) for the duration of the trial. This test is repeated for a POV approach towards the SV from an adjacent lane to the left and to the right of the SV.

—To pass a test trial, the BSW alert must be presented by a time no later than 300 ms after the front-most part of the POV enters the SV blind zone and remain on while the front-most part of the POV resides behind the front-most part of the SV blind zone. The BSW alert shall not be active once the longitudinal distance between the front-most part of the SV and the rear-most part of the POV exceeds the BSW termination distance specified for each POV speed.

For the BSW tests, each scenario is tested using seven repeated trials for each combination of approach direction (left and right side of the SV) and test speed. This translates to a total of 14 tests overall for the Straight Lane Converge and Diverge Test and 56 tests overall for the Straight Lane Pass-by Test. NCAP is proposing that to pass the NCAP system performance requirements, the SV must pass at least five out of seven trials conducted for each approach direction and test speed.

The proposed BSW tests represent pre-crash scenarios that correspond to a substantial portion of fatalities and injuries observed in real-world lane change crashes. A review of Volpe's 2011–2015 data set showed that approximately 28 percent of fatalities and 57 percent of injuries in lane change crashes occurred on roads with posted speeds of 72.4 kph (45 mph) or lower.[86] For crashes where the travel speed was reported in FARS and GES, approximately 14 percent of fatalities and 24 percent of injuries occurred at speeds of 72.4 kph (45 mph) or lower.[87] Furthermore, Volpe found that speeding was a factor in only 18 percent of the fatal lane change crashes and 3 percent of lane change crashes that resulted in injuries. This suggests that posted speed corresponds well to travel speed in most lane change crashes.[88] [89]

As noted earlier, market research conducted by Consumer Reports (CR) indicated that BSW systems are desirable in consumer interest surveys of various ADAS technologies. In fact, CR found not only that an overwhelming majority of vehicle owners were satisfied with BSW technology, but also that 60 percent of them believed BSW technology had helped them avoid a crash. However, in its study to evaluate the real-world effectiveness of ADAS technologies in model year 2013–2017 General Motors' (GM) vehicles, UMTRI found that GM's Side Blind Zone Alert produced a non-significant 3 percent reduction in lane change crashes. When the Side Blind Zone Alert technology was combined with an earlier generation technology, GM's Lane Change Alert, the corresponding effectiveness increased to 26 percent.[90] UMTRI attributed this increase to substantially longer vehicle detection ranges for the Lane Change Alert with Side Blind Zone Alert system compared to GM's earlier generation Side Blind Zone Alert system.[91] An Agency study of three BSW-equipped vehicles also showed that that currently available BSW systems may likely exhibit differences in detection capabilities and operating conditions such that their effectiveness estimates could vary significantly.[92] For instance, one vehicle's system may simply augment a driver's visual awareness whereas another may effectively prevent crashes by warning of higher speed lane change events. In its response to NCAP's December 2015 notice, Bosch provided similar insight. The company stated that some BSW systems may only provide benefit for shorter detection distances, such as 7 m (23.0 ft.) rearward, whereas other systems may provide detection for distances up to 70 m (229.7 ft.) rearward, which would help the driver avoid collisions with vehicles approaching from the rear in adjacent lanes at high speeds. The Agency plans to study these performance differences in its testing.

[85] SV blind zones are defined by two rectangular regions that extend to the side and rear of the SV. Each rectangle is 8.2 ft. (2.5 m) wide and is represented by lines parallel to the longitudinal centerline of the vehicle but offset 1.6 ft. (0.5 m) from the outermost edge of the SV's body excluding the side view mirror(s). The rearward projection begins at the rearmost part of the SV side mirror housing and ends at a rearward boundary that is dependent on the relative speed between the SV and POV. The blind zone is fully described in the test procedure.

[86] The posted speed limit was either not reported or was unknown in 2 percent of fatal lane change crashes and 18 percent of lane change crashes that resulted in injuries.

[87] The travel speed was either not reported or was unknown in 60 percent of fatal lane change crashes and 68 percent of lane change crashes that resulted in injuries.

[88] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[89] It was unknown or not reported whether speeding was a factor in 3 percent of fatal lane change crashes and 7 percent of lane change crashes that resulted in injuries.

[90] Leslie, A.J., Kiefer, R.J., Meitzner, M.R., & Flannagan, C. A. (2019), *Analysis of the field effectiveness of General Motors production active safety and advanced headlighting systems,* The University of Michigan Transportation Research Institute and General Motors LLC, UMTRI–2019–6.

[91] For GM's Lane Chane Alert systems, sensors in the vehicle's rear bumper are utilized to warn the driver of vehicles approaching from the rear on either the left or right side.

[92] Forkenbrock, G., Hoover, R.L., Gerdus, E., Van Buskirk, T.R., & Heitz, M. (2014, July), *Blind spot monitoring in light vehicles—System performance* (Report No. DOT HS 812 045), Washington, DC: National Highway Traffic Safety Administration.

NHTSA is proposing to conduct BSW tests in NCAP in accordance with the Agency's BSW test procedure. The Agency believes that the Straight Lane Pass-by Test scenario, which stipulates incrementally higher test speeds for the POV, could be used to distinguish between vehicles that have basic versus advanced BSW capability. For instance, an SV that can only satisfy the BSW activation criteria when the POV approaches with a low relative velocity may be considered as having basic BSW capability, whereas a vehicle that can look further rearward, to sense a passing vehicle travelling at a much higher speed, may be considered to have superior BSW capability. NHTSA believes such an assessment is important because when one vehicle encroaches into the adjacent lane of the other, the crashes associated with higher speed differentials can be expected to be more severe than those that occur when the two vehicle speeds are more similar. Furthermore, the capability of a vehicle to detect when another vehicle has entered an extended rear zone could be important for the application of other ADAS technologies such as blind spot intervention (BSI) or SAE [93] Level 2 partial driving automation [94] systems that incorporate automatic lane change features. Therefore, the Agency believes that long-range vehicle detection may not only increase the effectiveness of blind spot technologies such as BSI, but also enhance capabilities and robustness of other ADAS applications. For these reasons, NHTSA is proposing (later in this notice) the incorporation of BSI technology in NCAP to encourage the proliferation of such systems along with sensing strategies that offer a greater field of view.

Commenters to NHTSA's December 2015 notice overwhelmingly supported the addition of BSW in NCAP. In fact, many commenters suggested the Agency expand the testing requirements to encompass additional test targets, such as motorcycles, and test conditions. Several commenters also recommended that NHTSA harmonize its BSW test procedure with International Organization for Standardization (ISO) standards. Each of these topics will be discussed below.

[93] SAE International (2018), *SAE J3016_201806: Taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles,* Warrendale, PA, *www.sae.org.*

[94] The sustained driving automation system of both the lateral and longitudinal vehicle motion control with the expectation that the driver supervises the driving automation system.

a. Additional Test Targets and/or Test Conditions

Commenters, including the ASC, Continental, Bosch, NSC, and others, recommended that the Agency expand the BSW testing requirements to include motorcycle detection. Delphi, MTS, Medical College of Wisconsin (MCW), and CU suggested that NHTSA evaluate a vehicle's ability to detect bicycles in addition to motorcycles. Similarly, Subaru suggested that changes to the Straight Lane Pass-by Test should be made to address motorcycle detection. MTS and MCW added that motorcycle riders and bicyclists are more vulnerable to serious and fatal injuries compared to occupants of motor vehicles. A few commenters were not supportive of adding a motorcycle detection test in NCAP. Global Automakers and Hyundai stated that although it was a reasonable goal for the future, no standardized test devices currently existed at the time. Similarly, Honda and the Alliance recommended that the Agency focus on vehicle detection as a first step since no standard test procedure exists for motorcycle detection. The Alliance added that since the location of a motorcycle within a lane can vary greatly, test procedures would need to specify motorcycle behavior and reasonable detection distances. Furthermore, MTS stated that the position of the motorcycle POV within the lane (near, center, far) should be specified, and the radar cross section and projected area of the motorcycle should be considered as well.

NHTSA agrees that BSW systems capable of detecting motorcycles would improve safety. A review of the 2011 through 2015 FARS and GES data sets [95] showed that there were 106 fatal crashes and nearly 5,100 police-reported crashes annually, on average, for same direction lane change crashes involving a vehicle and motorcycle. In comparison, as mentioned earlier, there were 542 fatalities and 503,070 police-reported crashes annually, on average, for lane change crashes involving motor vehicles. These data show that more occupants of motor vehicles die in lane changing crashes than do motorcyclists. However, the fatality rate for motorcyclists is greater than that for vehicle occupants.

At this time, the Agency has decided to prioritize testing of BSW systems on motor vehicles for NCAP. NHTSA believes that performing BSW testing on light vehicles, particularly at higher POV closing speeds, and for active safety systems (as will be discussed next), should encourage development of robust sensing systems, which may improve the detection of other objects such as motorcycles. That being said, the Agency has planned an upcoming research project designed to address injuries and fatalities for other vulnerable road users, specifically motorcyclists. The Agency will continue to observe the development of BSW technology and is likely to include test procedures for motorcycle detection in NCAP at a later date if the technology meets the four prerequisites mentioned above.

Several commenters offered additional suggestions for ways NHTSA could expand the BSW test procedure. MCW suggested that the Agency adopt test scenarios that address curved roads and low light conditions. CU proposed that the Agency should assess whether BSW systems provide a clear indication to the driver that the system is not operating since sensors are sometimes rendered inoperable in poor weather or when blocked.

As with all the ADAS technologies, NHTSA recognizes that there is a need to understand and assure crash mitigation performance of BSW systems under all practical situations that the driver and vehicle will encounter in the real world. However, such comprehensive testing is not always practical within the scope of the NCAP program. Thus, for technologies that met the four principles for inclusion in NCAP, the Agency primarily attempted to address the most frequently occurring, most fatal, and most injurious pre-crash scenarios when prioritizing tests to add to the program. When ADAS technologies penetrate the fleet in sufficient numbers, then the Agency can evaluate how these systems are performing in the real world and adjust the system performance criteria accordingly to address additional test conditions, such as those mentioned by MCW. Regarding CU's suggestion, the Agency believes, after reviewing vehicle owner's manuals, that most vehicle manufacturers are including provisions in their system designs to provide a malfunction indicator to the driver if the system is no longer operational because the sensors are blocked or due to severe weather conditions.

NHTSA has also considered Bosch's request to expand the definition of BSW to encourage adoption of systems that provide longer detection distances. NHTSA believes, as discussed above,

[95] Swanson, E., Azeredo, P., Yanagisawa, M., & Najm, W. (2018, September), Pre-Crash Scenario Characteristics of Motorcycle Crashes for Crash Avoidance Research (Report No. DOT HS 812 902), Washington, DC: National Highway Traffic Safety Administration. In Press

that by using higher POV closing speeds to assess BSW system performance, it may effectively drive enhanced blind spot system capabilities such as those required for other rearward-looking ADAS applications, like BSI, or automatic lane change functions.

b. Test Procedure Harmonization

Several commenters suggested that NHTSA harmonize its BSW test procedure with International Organization for Standardization (ISO) standard 17387:2008, *Intelligent transport systems—Lane change decision aid systems (LCDAS)—Performance requirements and test procedures* or with various aspects of this standard. Global Automakers and Hyundai commented that NHTSA should shift the forward edge of the blind zone rearward from the outside rearview mirrors to the eye point of a 95th percentile person, as specified in ISO 17387. Hyundai stated that the ISO procedure is designed such that when the POV is in-line with the SV driver's eye ellipse, the driver's peripheral vision allows him/her to see the POV without the assistance of BSW systems. The ASC, Continental, and Subaru also suggested that the Agency align the warning zones in the Agency's BSW test procedure with those specified in ISO 17387.

The Agency does not agree with commenters' suggestion to adopt the ISO procedure for defining the forward edge of the blind zone as measured using the eye ellipse from a seated 95th percentile person. NHTSA believes that the blind zone should be defined not by a specific seated individual but by the vehicle's characteristics, since a real-world blind spot for any particular vehicle would differ depending on the size characteristics of the individual driving the vehicle at the time. Since people vary in size, they will sit in different seating positions and have different seating preferences. For instance, a 95th percentile male will be seated more rearward whereas a 5th percentile female will be seated more forward. In addition, drivers have personal preferences for adjusting their side view mirrors that may not be considered optimal and may not provide a full field of view when checking the mirrors to make change lanes. For these reasons, the Agency tentatively concludes that it is more appropriate and better for the safety of consumers to set the forward plane of the blind zone at the rearmost part of the side view mirrors, as specified in its BSW test procedure. This approach should not only best accommodate a wide variety of driver sizes and seating positions, but also reduce test complexity when defining the blind zone.

2. Adding Blind Spot Intervention (BSI)

Blind spot intervention (BSI) systems are similar to AEB and LKS systems in that they provide active intervention to help the driver avoid a collision with another vehicle. BSW systems alert a driver that a vehicle is in his/her blind spot, whereas BSI systems activate when the BSW alert is ignored, and intervene either by automatically applying the vehicle's brakes or providing a steering input to guide the vehicle back into the unobstructed lane. With their active capability, BSI systems can help a driver avoid collisions with other vehicles that are approaching the vehicle's blind spot, in addition to preventing crashes with vehicles operating within the vehicle's blind spot.

Like BSW systems, BSI systems utilize rear-facing sensors to detect other vehicles that are next to or behind the vehicle in adjacent lanes. Depending on the design of these systems, BSI activation may or may not require the driver to operate his/her turn signal indicator during a lane change. Furthermore, some BSI systems may only operate if the vehicle's BSW system is also enabled.

As discussed earlier, UMTRI found that GM's BSW system, Side Blind Zone Alert, produced a non-significant 3 percent reduction in lane change crashes. However, when Side Blind Zone Alert was combined with a later generation technology, GM's Lane Change Alert, the corresponding effectiveness increased to 26 percent.[96] Given BSI is only now penetrating the fleet, NHTSA is unaware of any effectiveness studies for this technology. However, as discussed earlier, the Agency believes that active safety technologies are more effective than warning technologies. The UMTRI study concluded that AEB is more effective than FCW alone and that LKS is more effective than LDW. The Agency believes the same relationship will likely hold true for blind spot systems, and that BSI will be more effective than BSW alone. NHTSA also believes, as mentioned above, that adopting ADAS technologies such as BSI should also encourage development of enhanced BSW system capabilities (*e.g.,* motorcycle and bicycle detection), and may increase the robustness of other ADAS applications.

NHTSA is proposing to use its published draft test procedure titled, ''Blind Spot Intervention System Confirmation Test,'' [97] to evaluate the performance of vehicles equipped with BSI technology in NCAP. The Agency's test procedure consists of three scenarios: Subject Vehicle (SV) Lane Change with Constant Headway, SV Lane Change with Closing Headway, and SV Lane Change with Constant Headway, False Positive Assessment. In the first two scenarios, an SV initiates or attempts a lane change into an adjacent lane while a single POV is residing within the SV's blind zone (Scenario 1), or is approaching it from the rear (Scenario 2). The third scenario is used to evaluate the propensity of a BSI system to activate inappropriately in a non-critical driving scenario that does not present a safety risk to the occupants in the SV. In each of the tests, the POV is a strikeable object with the characteristics of a compact passenger car. The system performance requirements stipulate that the SV may not contact the POV during the conduct of any test trial. NHTSA is requesting comment on the number of trials that are appropriate for each test. Each of these scenarios, along with the proposed evaluation criteria, is detailed below: [98]

- SV Lane Change with Constant Headway—The POV is driven at 72.4 kph (45 mph) in a lane adjacent and to the left of the SV also traveling at 72.4 kph (45 mph) with a constant longitudinal offset such that the front-most part of the POV is 1 m (3.3 ft.) ahead of the rear-most part of the SV. After a short period of steady-state driving, the SV driver engages the left turn signal indicator at least 3 s after all pre-SV lane change test validity criteria have been satisfied. Within 1.0 ± 0.5 s after the turn signal has been activated, the SV driver initiates a manual lane change into the POV's travel lane. The SV driver then releases the steering wheel within 250 ms of the SV exiting a 800.1 m (2,625 ft.) radius curve during the lane change. To meet the performance criteria, the BSI system must intervene so as to prevent the left rear of the SV from contacting the right front of the POV. Additionally, the SV

[96] Leslie, A.J., Kiefer, R.J., Meitzner, M.R., & Flannagan, C.A. (2019), *Analysis of the field effectiveness of General Motors production active safety and advanced headlighting systems,* The University of Michigan Transportation Research Institute and General Motors LLC, UMTRI–2019–6.

[97] 84 FR 64405 (Nov. 21, 2019).

[98] The Agency notes that these test scenario descriptions assume the SV is operating in SAE Automation Level 0 or Level 1 operation with only the Automatic Cruise Control (ACC) enabled. Though the Agency's BSI test procedure has provisions to evaluate vehicles operating in SAE Automation Levels 2 or 3. Test scenario descriptions for these evaluations are not discussed herein.

BSI intervention shall not cause the SV to travel 1.0 ft. (0.3 m) or more beyond the inboard edge of the lane line separating the SV travel lane from the lane adjacent and to the right of it within the validity period.

- SV Lane Change with Closing Headway Scenario—The POV is driven at a constant speed of 80.5 kph (50 mph) towards the rear of the SV in an adjacent lane to the left of the SV, which is traveling at a constant speed of 72.4 kph (45 mph). During the test, the SV driver engages the turn signal indicator when the POV is 4.9 ± 0.5 s from a vertical plane defined by the rear of the SV and perpendicular to the SV travel lane. Within 1.0 ± 0.5 s after the turn signal has been activated, the SV driver initiates a manual lane change into the POV's travel lane. The SV driver then releases the steering wheel within 250 ms of the SV exiting a 800.1 m (2,625 ft.) radius curve. To meet the performance criteria, the BSI system must intervene to prevent the left rear of the SV from contacting the right front of the POV. Additionally, the SV BSI intervention shall not cause the SV to travel 1.0 ft. (0.3 m) or more beyond the inboard edge of the lane line separating the SV travel lane from the lane adjacent and to the right of it within the validity period.
- SV Lane Change with Constant Headway, False Positive Assessment Test—The POV is driven at 72.4 kph (45 mph) in a lane that is two lanes to the left of the SV's initial travel lane with a constant longitudinal offset such that the front-most part of the POV is 1 m (3.3 ft.) ahead of the rear-most part of the SV, which is also travelling at 72.4 kph (45 mph). The SV driver engages the left turn signal indicator at least 3 s after all pre-SV lane change test validity criteria have been satisfied. Within 1.0 ± 0.5 s after the turn signal has been activated, the SV driver initiates a manual lane change into the left adjacent lane (the one between the SV and POV). For this test, the driver does not release the steering wheel. Since the lane change will not result in an SV-to-POV impact, the SV BSI system must not intervene during any valid trials. To determine whether a BSI intervention occurred, the SV yaw rate data collected during the individual trials performed in this scenario are compared to a baseline composite. After being aligned in time to the baseline, the difference between the data must not exceed 1 degree/second within the test validity period.

The proposed crash-imminent BSI test scenarios represent pre-crash scenarios that correspond to a substantial portion of fatalities and injuries observed in real-world lane change crashes. As discussed in the BSW crash statistics section, Volpe showed that approximately 28 percent of fatalities and 57 percent of injuries in lane change crashes occurred on roads with posted speeds of 72.4 kph (45 mph) or lower.[99] Furthermore, approximately 14 percent of fatalities and 24 percent of injuries were reported for crashes that occurred at known travel speeds of 72.4 kph (45 mph) or lower.[100]

NHTSA has conducted a series of tests utilizing its proposed BSI test procedure. Since BSI systems are not widely available in the fleet, the Agency selected vehicles in order to cover as many manufacturers as possible that have implemented this technology. All vehicles selected for BSW testing also underwent BSI testing. Test reports related to both test programs can be found in the docket for this notice. For the purposes of this testing, the Agency used the Global Vehicle Target (GVT) Revision G to represent the POV, which is specified in the BSI test procedure as a strikeable object.[101] When the BSI technology assessment is incorporated into NCAP, the Agency plans to use the GVT Revision G as a strikeable target to be consistent with Euro NCAP's ADAS test procedures that specify a strikeable target. In the context of testing BSW and BSI technologies in NCAP to address lane change crashes, NHTSA is seeking comment on the following:

(16) Should all BSW testing be conducted without the turn signal indicator activated? Why or why not? If the Agency was to modify the BSW test procedure to stipulate activation of the turn signal indicator, should the test vehicle be required to provide an audible or haptic warning that another vehicle is in its blind zone, or is a visual warning sufficient? If a visual warning is sufficient, should it continually flash, at a minimum, to provide a distinction from the blind spot status when the turn signal is not in use? Why or why not?

(17) Is it appropriate for the Agency to use the Straight Lane Pass-by Test to quantify and ultimately differentiate a vehicle's BSW capability based on its ability to provide acceptable warnings when the POV has entered the SV's blind spot (as defined by the blind zone) for varying POV–SV speed differentials? Why or why not?

(18) Is using the GVT as the strikeable POV in the BSI test procedure appropriate? Is using Revision G in NCAP appropriate? Why or why not?

(19) The Agency recognizes that the BSW test procedure currently contains two test scenarios that have multiple test conditions (*e.g.,* test speeds and POV approach directions (left and right side of the SV)). Is it necessary for the Agency to perform all test scenarios and test conditions to address the real-world safety problem adequately, or could it test only certain scenarios or conditions to minimize test burden in NCAP? For instance, should the Agency consider incorporating only the most challenging test conditions into NCAP, such as the ones with the greatest speed differential, or choose to perform the test conditions having the lowest and highest speeds? Should the Agency consider only performing the test conditions where the POV passes by the SV on the left side if the vehicle manufacturer provides test data to assure the left side pass-by tests are also representative of system performance during right side pass-by tests? Why or why not?

(20) Given the Agency's concern about the amount of system performance testing under consideration in this RFC, it seeks input on whether to include a BSI false positive test. Is a false positive assessment needed to insure system robustness and high customer satisfaction? Why or why not?

(21) The BSW test procedure includes 7 repeated trials for each test condition (*i.e.,* test speed and POV approach direction). Is this an appropriate number of repeat trials? Why or why not? What is the appropriate number of test trials to adopt for each BSI test scenario, and why? Also, what is an appropriate pass rate for each of the two tests, BSW and BSI, and why is it appropriate?

(22) Is it reasonable to perform only BSI tests in conjunction with activation of the turn signal? Why or why not? If the turn signal is not used, how can the operation of BSI be differentiated from the heading adjustments resulting from an LKS intervention? Should the SV's LKS system be switched off during conduct of the Agency's BSI evaluations? Why or why not?

C. Adding Pedestrian Automatic Emergency Braking (PAEB)

Another important ADAS technology NHTSA proposes to include in its upgrade of NCAP is pedestrian automatic emergency braking (PAEB).

[99] The posted speed limit was either not reported or was unknown in 2 percent of fatal lane change crashes and 18 percent of lane change crashes that resulted in injuries.

[100] The travel speed was either not reported or was unknown in 65 percent of fatal lane change crashes and 67 percent of lane change crashes that resulted in injuries.

[101] The GVT is a three-dimensional surrogate that resembles a white hatchback passenger car. It is currently used by other consumer organizations, including Euro NCAP, and vehicle manufacturers in their internal testing of ADAS technologies. See Section III.D.2. of this notice for an expanded discussion of the GVT.

PAEB systems function similar to AEB systems but detect pedestrians instead of vehicles. PAEB uses information from forward-looking sensors to issue a warning and actively apply the vehicle's brakes when a pedestrian, or sometimes a cyclist, is in front of the vehicle and the driver has not acted to avoid the impending impact. Similar to AEB, PAEB systems typically use cameras to determine whether a pedestrian is in imminent danger of being struck by the vehicle, but some systems may use a combination of cameras, radar, lidar, and/or thermal imaging sensors.

Many pedestrian crashes occur when a pedestrian is in the forward path of a driver's vehicle. Four common pedestrian crash scenarios include when the vehicle is:

1. Heading straight and a pedestrian is crossing the road;
2. Turning right and a pedestrian is crossing the road;
3. Turning left and a pedestrian is crossing the road; and
4. Heading straight and a pedestrian is walking along or against traffic.

These four crash scenarios are defined as Scenarios S1–S4, respectively, by the Crash Avoidance Metrics Partnership (CAMP) Crash Imminent Braking (CIB) Consortium.[102]

Two of these scenarios, S1 and S4, are included in NHTSA's draft research PAEB test procedure, published on November 21, 2019, and referenced herein as the 2019 PAEB test procedure.[103] The S1 scenario represents a pedestrian crossing the road in front of the vehicle, while the S4 scenario represents a pedestrian moving with or against traffic along the side of the road in the path of the vehicle. Both test scenarios are repeated for multiple pedestrian impact locations. The S1 and S4 crash scenarios were chosen for inclusion in NHTSA's 2019 PAEB test procedure because a review of pedestrian crashes from the 2011 through 2012 GES and FARS data sets [104] found that, on average, these two pre-crash scenarios (S1 and S4) accounted for approximately 33,000 (52 percent) of vehicle-pedestrian crashes and 3,000 (90 percent) fatal vehicle-pedestrian crashes with a light-vehicle striking a pedestrian as the first event. Furthermore, these crashes accounted for 67 percent of MAIS 2+ and 76 percent of MAIS 3+ injured pedestrians.[105] The 2019 PAEB test procedure only considered daylight test conditions for both the S1 and S4 crash scenarios.

The Agency's 2019 PAEB test procedure does not include CAMP scenario S2 (vehicle turning right and a pedestrian crossing the road), and CAMP scenario S3 (vehicle turning left and a pedestrian crossing the road). In response to the December 2015 notice, several commenters stated that addressing these scenarios with available technology may generate a significant number of false positive detections. Such false detections could have the unintended consequences of causing hazardous situations (*e.g.,* unexpected sudden braking while turning in traffic) that could lead drivers to disable their PAEB systems, or even lead to an increase in rear-end collisions. The commenters explained that the S2 and S3 test scenarios require more sophisticated algorithms as well as more robust test methodologies than those required for scenarios S1 and S4. However, ZF TRW mentioned that ADAS sensors designed to meet Euro NCAP's Vulnerable Road Users test procedures would have increased fields of view (FOV), which should improve their effectiveness in turning scenarios. Others stated that the articulating mannequins may not be representative of a real human for all sensing technologies in turning scenarios. Most commenters indicated that it was more appropriate to focus on the scenarios affording the most significant safety benefits first—S1 and S4. Commenters stated that adding the S2 and S3 scenarios would be more practical when the technology matures. NHTSA will continue to evaluate PAEB systems to assess the feasibility of expanding the suite of PAEB tests as technological advancements are made. The Agency will consider adding these test scenarios (S2 and S3) to NCAP in the future once the Agency has repeatable and reliable test data to support their inclusion.

In the 2019 PAEB test procedure, the S1 test scenario includes seven different test conditions—S1a, S1b, S1c, S1d, S1e, S1f, and S1g. For these tests, the SV travels in a straight, forward direction at 40 kph (24.9 mph). Additionally, the SV also travels at 16 kph (9.9 mph) for test conditions S1a, S1b, S1c, and S1d. A pedestrian mannequin crosses perpendicular to the subject vehicle's line of travel at 5 kph (3.1 mph) for all test conditions, except for S1e, in which the mannequin crosses at 8 kph (5.0 mph). In test condition S1a, the SV encounters a crossing adult pedestrian mannequin walking from the nearside (*i.e.,* the passenger's side of the vehicle) with 25 percent overlap of the vehicle.[106] In test conditions S1b and S1c, the SV encounters a crossing adult pedestrian walking from the nearside with 50 percent and 75 percent overlap of the vehicle, respectively. In test condition S1d, the SV encounters a crossing child pedestrian mannequin running from behind parked vehicles from the nearside with 50 percent overlap of the vehicle. In test condition S1e, the SV encounters a crossing adult pedestrian running from the ''offside'' (*i.e.,* the driver's side of the vehicle) with 50 percent overlap of the vehicle. In test condition S1f, the SV encounters a crossing adult pedestrian walking from the nearside that stops short (−25% overlap) of entering the vehicle's path. In test condition S1g, the SV encounters a crossing adult pedestrian walking from the nearside that clears the vehicle's path (125% overlap).

The S4 test scenario in the 2019 PAEB test procedure includes three different test conditions—S4a, S4b, and S4c. In this test scenario, the SV travels in a straight, forward direction at 40 kph (24.9 mph) and/or 16 kph (9.9 mph) (for test conditions S4a and S4b) and a pedestrian mannequin moves parallel to the flow of traffic at 5 kph (3.1 mph) (for test condition S4c) or is stationary (for test condition S4a and S4b) in front of the SV. For all S4 test conditions, the SV is aligned to impact the pedestrian at 25 percent overlap. In test condition S4a, the SV encounters an adult pedestrian standing in front of the vehicle on the nearside of the road facing away from the approaching SV. In test condition S4b, the SV encounters an adult pedestrian standing in front of the vehicle on the nearside of the road facing towards the approaching SV. In test condition S4c, the SV encounters an adult pedestrian walking in front of the vehicle on the nearside of the road facing away from the approaching SV.

[102] Carpenter, M.G., Moury, M.T., Skvarce, J.R., Struck, M. Zwicky, T. D., & Kiger, S.M. (2014, June), *Objective tests for forward looking pedestrian crash avoidance/mitigation systems: Final report* (Report No. DOT HS 812 040), Washington, DC: National Highway Traffic Safety Administration.

[103] 84 FR 64405 (Nov. 21, 2019).

[104] Yanagisawa, M., Swanson, E., Azeredo, P., & Najm, W.G. (2017, April), *Estimation of potential safety benefits for pedestrian crash avoidance/mitigation systems* (Report No. DOT HS 812 400), Washington, DC: National Highway Traffic Safety Administration.

[105] As explained previously, the Abbreviated Injury Scale (AIS) is a classification system for assessing impact injury severity. AIS ranks individual injuries by body region on a scale of 1 to 6 where 1 = minor, 2 = moderate, 3 = serious, 4 = severe, 5 = critical, and 6 = maximum (untreatable). MAIS represents the maximum injury severity, or AIS level, recorded for an occupant (*i.e.,* the highest single AIS for a person with one or more injuries).

[106] Overlap is defined as the percent of the vehicle's width that the pedestrian would traverse prior to impact if the vehicle's speed and pedestrian's speed remain constant.

The Agency is proposing to make several changes to the 2019 PAEB test procedure for the purpose of adopting it for use in NCAP. These changes involve the pedestrian mannequins, test speeds and included test conditions, the specified lighting conditions, and the number of test trials required to be conducted for each test condition.

The first change the Agency is proposing to make to the 2019 PAEB test procedure concerns the pedestrian targets. As was recommended by several commenters who responded to the December 2015 notice, the Agency proposes to utilize state-of-the-art mannequins with articulated, moving legs, instead of the posable child and adult pedestrian test mannequins specified in the 2019 PAEB test procedure. NHTSA believes that the articulating pedestrian targets are more representative of walking pedestrians and expects that these more realistic targets will encourage development of PAEB systems that detect, classify, and respond to pedestrians more accurately and effectively. In turn, this should allow manufacturers to improve the effectiveness of current PAEB systems. The Agency also recognizes that adopting the child and adult articulating targets would harmonize with other major consumer information-focused entities that use articulating mannequins, such as Euro NCAP and IIHS. The Bipartisan Infrastructure Law mandated that NHTSA identify opportunities where NCAP would ''benefit from harmonization with third-party safety rating programs,'' and the Agency believes that the pedestrian mannequins represent one such opportunity.

The second change the Agency is proposing to make to the 2019 PAEB test procedure for incorporation into NCAP involves test speeds. The test speeds specified in the 2019 PAEB test procedure correspond to a relatively small percentage of crashes that result in pedestrian injuries and fatalities. Volpe's analysis of 2011–2015 FARS and GES crash data sets showed that 9 percent of pedestrian fatalities and 25 percent of pedestrian injuries resulted from crashes that occurred on roadways with posted speeds of 40.2 kph (25 mph) or less, whereas 88 percent of fatalities and 43 percent of injuries occurred for crashes on roadways with posted speeds greater than 40.2 kph (25 mph).[107] [108] For crashes that occurred on roadways where the travel speed was known, 6 percent of pedestrian fatalities and 19 percent of pedestrian injuries were reported for travel speeds of 40.2 kph (25 mph) or less, whereas 36 percent of fatalities and 7 percent of injuries occurred for travel speeds greater than 40.2 kph (25 mph).[109] NHTSA notes that speeding was a factor in only 5 percent of the fatal pedestrian crashes, which suggests that the posted speed could correlate closely with the travel speed of the vehicle prior to impact with the pedestrian.[110] [111]

As Volpe's analysis focused on 2011–2015 FARS and GES crash data sets, it is likely that most vehicles studied were not equipped with PAEB systems. Recently, IIHS studied approximately 1,500 police-reported crashes involving a wide variety of 2017–2020 model year vehicles from various manufacturers to examine the effects of PAEB systems on real-world pedestrian crashes.[112] In this study, the Institute found that ''pedestrian AEB was associated with a 32 percent reduction in the odds of a pedestrian crash on roads with speed limits of 25 mph or less and a 34 percent reduction on roads with 30–35 mph limits, but no reduction at all on roads with speed limits of 50 mph or higher. . .''. These findings highlight the limitations of existing PAEB systems and the importance of adopting higher test speeds for PAEB testing (where feasible) to encourage additional safety improvement.

To establish feasible speed thresholds for adoption in its PAEB test procedure, the Agency conducted a series of tests on a selection of MY 2020 vehicles from various manufacturers to assess the operational range and performance of current PAEB systems. Vehicles for the PAEB characterization tests were selected with the intent of testing a variety of vehicle makes, types, sizes; global and domestic products; and forward-facing sensor types (camera only, stereo camera, fused camera plus radar, etc.) for a given manufacturer and across all manufacturers.

For the purpose of this study, the Agency used the 2019 PAEB test procedure, but employed the articulating mannequins in lieu of the posable mannequins and expanded the test procedure specifications to include increased vehicle test speeds for the S1b, S1d, S1e, S4a, and S4c test conditions. For these tests, the SV speed was incrementally increased to identify when each SV reached its operational limits and did not respond to the pedestrian target. Before the tests were initiated, the maximum test speeds for the S1 and S4 scenarios were set to 60 kph (37.2 mph) and 80 kph (49.7 mph), respectively.[113] These maximum speeds are consistent with Euro NCAP's AEB Vulnerable Road User test protocol and correspond to up to 74 percent of fatal pedestrian crashes and 65 percent of injurious pedestrian crashes that occurred on U.S. roadways, per Volpe's 2011–2015 FARS and GES analysis of posted speed data.[114] When no or late intervention occurred for a vehicle and test condition (*i.e.,* combination of test scenario and speed), NHTSA repeated the test condition at a test speed that was 5 kph (3.1 mph) lower. This reduced speed defined the system's upper capabilities.

A test matrix of the PAEB characterization study regarding test speed is provided below.

- Full PAEB test series (includes S1 a–g and S4 a–c)

Daytime light conditions, articulating dummies, and additional SV test speeds in kph (mph) for S1b, d, and e, and S4a and c, as shown in Table 4.

[107] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[108] The posted speed limit was either not reported or was unknown in 4 percent of fatal pedestrian crashes and 29 percent of pedestrian crashes that resulted in injuries.

[109] The travel speed was either not reported or was unknown in 59 percent of fatal pedestrian crashes and 72 percent of pedestrian crashes that resulted in injuries.

[110] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[111] In 4 percent of pedestrian crashes, it was unknown or not reported whether speeding was a factor.

[112] Cicchino, J.B. (2022, February), *Effects of automatic emergency braking systems on pedestrian crash risk,* Insurance Institute for Highway Safety, *https://www.iihs.org/api/datastoredocument/bibliography/2243.*

[113] These test speeds represent the maximum test speeds potentially utilized for a given test condition. The actual speeds used for a given combination of vehicle and test condition depended on observed PAEB system performance.

[114] European New Car Assessment Programme (Euro NCAP). (2019, July). *TEST PROTOCOL—AEB VRU systems* 3.0.2.

TABLE 4—COMPLETE MATRIX OF THE PAEB CHARACTERIZATION STUDY

Scenario	S1a	S1b	S1c	S1d	S1e	S1f	S1g	S4a	S4b	S4c
Subject Vehicle Speed (kph/mph)	16.0/9.9	16.0/9.9	16.0/9.9	16.0/9.9	40.0/24.9	40.0/24.9	40.0/24.9	16.0/9.9	16.0/9.9	16.0/9.9
	40.0/24.9	20.0/12.4	40.0/24.9	20.0/12.4	50.0/31.1			40.0/24.9	40.0/24.9	40.0/24.9
		30.0/18.6		30.0/18.6	60.0/37.3			50.0/31.1		50.0/31.1
		40.0/24.9		40.0/24.9				60.0/37.3		60.0/37.3
		50.0/31.1		50.0/31.1				70.0/43.5		70.0/43.5
		60.0/37.3		60.0/37.3				80.0/49.7		80.0/49.7

The Agency's characterization testing showed that many MY 2020 vehicles were able to repeatedly avoid impacting the pedestrian mannequins at higher test speeds than those specified in the 2019 PAEB test procedure. In fact, several vehicles repeatably achieved full crash avoidance at speeds up to 60 kph (37.3 mph) or higher for the assessed S1 and S4 test conditions. Test reports related to this testing can be found in the docket for this notice.

In light of these results, NHTSA is proposing to increase the maximum SV test speed from the 40 kph (24.9 mph) specified in the 2019 PAEB test procedure to 60 kph (37.3 mph) for all PAEB test conditions the Agency is proposing to include in NCAP. These include S1a–e and S4a–c. The Agency notes that it is not proposing to include PAEB false positive test conditions (*i.e.,* S1f and S1g) in NCAP at this time, but is requesting comment on whether the omission of these test conditions is appropriate. NHTSA also notes that 60 kph (37.3 mph) is the maximum vehicle speed Euro NCAP uses to assess PAEB performance for test conditions that are similar to, if not identical to, some of those proposed for use in NCAP, namely S1a, c, d, and e, and S4c. Adopting this higher test speed will also drive improved PAEB system performance to address a larger portion of real-world fatalities and injuries.

The Agency is also proposing a minimum test speed of 10 kph (6.2 mph) for all of the proposed test scenarios. Although this speed is lower than the minimum test speed used in the 2019 PAEB test procedure and in its characterization testing (*i.e.,* 16 kph (9.9 mph)), it is the minimum test speed specified in Euro NCAP's pedestrian tests, with the exception of Euro NCAP's Car-to-Pedestrian Longitudinal Adult (CPLA) scenario. The minimum vehicle test speed for the CPLA scenario, which is similar to the Agency's PAEB S4c test scenario, is 20 kph (12.4 mph).[115] As stated earlier, in accordance with the Bipartisan Infrastructure Law, the Agency is taking steps to harmonize with existing consumer information rating programs where possible and when appropriate. NHTSA also believes that reducing the minimum test speed to 10 kph (6.2 mph) will assure PAEB system functionality for crashes that may still cause injuries.

In an effort to harmonize with other consumer information programs on vehicle safety, NHTSA is also proposing to adopt Euro NCAP's approach to assessing vehicles' PAEB system performance by incrementally increasing the SV speed from the minimum test speed for a given scenario to the maximum. The Agency is proposing 10 kph (6.2 mph) increments for this progression in test speed. In their comments to the December 2015 notice, Global Automakers and Mobileye encouraged NHTSA to expand the applicability of the PAEB tests, particularly the S1 scenario, to include a broader range of test speeds because pedestrian injuries occurred over a wide range of crash speeds, as the Agency has also indicated. The organizations also mentioned that PAEB system performance reflects a trade-off between FOV and collision speed/detection distance. Systems that have a narrow FOV are more effective at addressing higher speed crashes since they can see further, and systems that have a wider FOV are more effective at addressing lower speed impacts.

As its third change to the 2019 PAEB test procedure, the Agency is proposing to expand PAEB evaluation to include different lighting conditions. NHTSA's PAEB characterization study included performance assessments for dark lighting conditions (*i.e.,* nighttime testing), in addition to the daylight conditions specified in the 2019 PAEB test procedure, for the same test vehicles. For each vehicle model tested, one set of tests was conducted with the pedestrian mannequin illuminated only by the vehicle's lower beams and a second set of tests with the pedestrian mannequin illuminated by the upper beams. The area where the mannequin was located was not provided any additional (*i.e.,* external) light source. This repeat testing was conducted because Volpe's 2011–2015 FARS data set showed that 36 percent of pedestrian fatalities occurred in the dark with no overhead lights. Test matrices of the PAEB characterization study with respect to dark lighting conditions are provided in Tables 5 and 6.

- PAEB test series (includes S1b, d, and e, and S4a and c)

Dark conditions with lower beams, articulating dummies, and additional SV test speeds in kph (mph), are shown in Table 5.

TABLE 5—PAEB TEST SERIES FOR DARK CONDITIONS WITH LOWER BEAMS

Scenario	S1b	S1d	S1e	S4a	S4c
Subject Vehicle Speed (kph/mph)	16.0/9.9	16.0/9.9	40.0/24.9	16.0/9.9	16.0/9.9
	20.0/12.4	20.0/12.4	50.0/31.1	40.0/24.9	40.0/24.9
	30.0/18.6	30.0/18.6	60.0/37.3	50.0/31.1	50.0/31.1
	40.0/24.9	40.0/24.9		60.0/37.3	60.0/37.3
	50.0/31.1	50.0/31.1		70.0/43.5	70.0/43.5
	60.0/37.3	60.0/37.3		80.0/49.7	80.0/49.7

[115] One difference in the Agency's proposed S4c test condition and Euro NCAP's CPLA test condition is the amount of pedestrian overlap with the vehicle at the lower speed (NHTSA uses a 25 percent overlap while a 50 percent overlap is used in Euro NCAP's CPLA test). NHTSA believes that for the 25 percent overlap condition in S4c, a minimum test speed of 10 kph (6.2 mph) is appropriate and does not see a reason to deviate from the minimum test speed (10 kph (6.2 mph)) proposed for the other PAEB test conditions.

• PAEB test series (includes S1b, d, and e, and S4a and c)

Dark conditions with upper beams, articulating dummies, and additional SV test speeds in kph (mph), are shown in Table 6.

TABLE 6—PAEB TEST SERIES FOR DARK CONDITIONS WITH UPPER BEAMS

Scenario	S1b	S1d	S1e	S4a	S4c
Subject Vehicle Speed (kph/mph)	16.0/9.9	16.0/9.9	40.0/24.9	16.0/9.9	16.0/9.9
	20.0/12.4	20.0/12.4	50.0/31.1	40.0/24.9	40.0/24.9
	30.0/18.6	30.0/18.6	60.0/37.3	50.0/31.1	50.0/31.1
	40.0/24.9	40.0/24.9		60.0/37.3	60.0/37.3
	50.0/31.1	50.0/31.1		70.0/43.5	70.0/43.5
	60.0/37.3	60.0/37.3		80.0/49.7	80.0/49.7

The Agency's characterization testing (Tables 5 and 6) revealed that PAEB system performance generally degraded in dark conditions compared to daylight conditions. Additionally, certain test conditions, such as S1d and S1e, were particularly challenging in dark conditions, especially when the vehicle's lower beams were used. However, a few vehicles were able to repeatedly avoid contact with the pedestrian mannequins at speeds up to 60 kph (37.3 mph) for certain test conditions when the vehicles' lower beams provided the only source of light.

NHTSA's findings for PAEB system performance during testing align generally well with those from IIHS' recent system effectiveness study for 2017–2020 model year vehicles. IIHS found that although PAEB systems were associated with a 32 percent reduction in pedestrian crashes occurring during daylight, and a 33 percent reduction in pedestrian crashes for areas with artificial lighting during dawn, dusk, or at night, there was no evidence that PAEB systems were effective at nighttime without street lighting.[116]

Based on the results of the PAEB characterization study and IIHS' findings in its recent study, NHTSA is proposing to perform the proposed test conditions (S1 a-e and S4 a-c) under daylight conditions and under dark conditions with the vehicle's lower beams. NHTSA notes that Euro NCAP conducts PAEB testing that is similar to the Agency's S4c test condition under dark conditions with vehicles' upper beams in use. Because the Agency cannot be assured that a vehicle's upper beams are in use during nighttime (*i.e.,* dark lighting conditions) real-world driving, NHTSA is proposing only to perform nighttime PAEB assessments using vehicles' lower beams for all test conditions included in NCAP at this time. However, if the SV is equipped with advanced lighting systems such as semiautomatic headlamp beam switching and/or adaptive driving beam head lighting system, they shall be enabled to automatically engage during the nighttime PAEB assessment. The Agency believes this approach covers the two extreme light conditions and as such, information regarding performance with the upper beams or under infrastructure lighting can be reasonably inferred.

The Agency recognizes that Euro NCAP performs testing similar to S1a and S1c at speeds of 10 kph (6.2 mph) to 60 kph (37.3 mph) in dark conditions with the SV lower beams in use; however, overhead streetlights are also used in these tests to provide additional light source. To study potential performance differences attributable to the use of overhead lights during dark conditions, NHTSA performed additional testing for PAEB scenarios S1 b, d, and e and S4 a and c for a subset of test speeds, 16 kph (9.9 mph) and 40 kph (24.9 mph), for two of the MY 2020 vehicles used in its initial characterization study. This study was performed using the vehicles' lower beams under dark conditions with overhead lights. For this limited testing, the Agency observed slightly better PAEB performance in dark lighting conditions with overhead lights than in dark lighting conditions without overhead lights.

NHTSA believes that testing with the vehicles' lower beams in dark conditions without overhead lights is appropriate, particularly at higher test speeds, as it would assure system performance for real-world situations where visibility is the most limited. Furthermore, as mentioned previously, dark lighting conditions with no overhead lights represented 36 percent of pedestrian fatalities and dark lighting conditions with overhead lights represented 39 percent of pedestrian fatalities in Volpe's 2011–2015 FARS data set. Additionally, PAEB systems that meet the performance test specifications under dark lighting conditions with no overhead lights are likely to meet the performance specifications under dark lighting conditions with overhead lights. Thus, the Agency believes assessment of PAEB systems under dark conditions with no overhead lights and with the vehicle's lower beams will encourage vehicle manufacturers to make design improvements to address a significant portion of crashes that currently result in pedestrian fatalities.

For the PAEB performance criteria, NHTSA is proposing that a vehicle must achieve complete crash avoidance (*i.e.,* have no contact with the pedestrian mannequin) in order to pass a test trial conducted at each specified test speed (*i.e.,* 10, 20, 30, 40, 50, and 60 kph (6.2, 12.4, 18.6, 24.9, 31.1, and 37.3 mph)) for each test condition (S1a, b, c, d, and e and S4a, b, and c). NHTSA believes that this approach, used in conjunction with an incremental increase in SV speed, should limit damage to the pedestrian mannequin and/or the SV during testing.

Along these lines, NHTSA is proposing a fourth change to the 2019 PAEB test procedure regarding the number of test trials conducted for each combination of test condition and test speed. The 2019 PAEB test procedure specifies seven test trials be conducted for each test speed under each test condition. The Agency is proposing, however, to not require that more than one test be conducted per test speed and test condition combination if certain criteria are met, and is proposing that the pass rate for a given test speed will be dependent on whether additional test trials are required to be performed.[117]

For a given test condition, the test sequence is initiated at the 10 kph (6.2 mph) minimum speed. To achieve a pass result, the test must be valid (*i.e.,* all test specification and tolerances satisfied), and the SV must not contact

[116] Cicchino, J.B. (2022, February), *Effects of automatic emergency braking systems on pedestrian crash risk,* Insurance Institute for Highway Safety, *https://www.iihs.org/api/datastoredocument/bibliography/2243.*

[117] This is a divergence from assessment of LKS, BSW, and BSI where a vehicle must meet performance requirements for five out of seven valid test trials for a particular test condition to pass that test condition.

the pedestrian mannequin. If the SV does not contact the pedestrian mannequin during the first valid test, the test speed is incrementally increased by 10 kph (6.2 mph), and the next test in the sequence is performed. Unless the SV contacts the pedestrian mannequin, this iterative process continues until a maximum test speed of 60 kph (37.3 mph) is evaluated. If the SV contacts the pedestrian mannequin, and the relative longitudinal velocity between the SV and pedestrian mannequin is less than or equal to 50 percent of the initial speed of the SV, the Agency will perform four additional (repeated) test trials at the same speed for which the impact occurred. The vehicle must not contact the pedestrian mannequin for at least three out of the five test trials performed at that same speed to pass that specific combination of test condition and test speed.[118] If the SV contacts the pedestrian mannequin during a valid test of a test condition (whether it be the first test performed for a particular test speed or a subsequent test trial at that same speed), and the relative impact velocity exceeds 50 percent of the initial speed of the SV, no additional test trials will be conducted at the given test speed and test condition and the SV is considered to have failed the test condition at that specific test speed.

The Agency is pursuing an assessment approach for PAEB systems that differs from the evaluation criteria proposed for the other four proposed ADAS technologies discussed earlier in an attempt to reduce test burden, but still ensure that passing systems include robust designs that will afford an enhanced level of safety. NHTSA recognizes that it is proposing a large number of PAEB test conditions for inclusion in NCAP—eight total. The Agency also acknowledges that these test conditions must be repeated for multiple test speeds and lighting conditions, which inherently imposes additional test burden. Therefore, the Agency believes that it is reasonable to reduce the number of test trials that must be conducted at a given test speed for a particular test condition since the SV's PAEB system will also be assessed at subsequent test speeds, which would help system robustness. This would further be supported by the Agency's proposal to require that five test trials be performed in instances where the SV is unable to meet the no contact performance requirement in the initial valid trial for that combination of test condition and speed.

Although NHTSA believes that the assessment approach for PAEB systems proposed herein is the most reasonable one, the Agency is requesting comment on whether it should instead pursue an alternative approach, such as conducting seven trials for each test condition and speed combination, and requiring that five of the seven trials meet the no contact performance criterion. Again, this latter approach would be similar to the one proposed for the other ADAS technologies discussed earlier.

Previously, NHTSA noted that it did not conduct the S2 and S3 test scenarios as part of the characterization study and is not proposing these test scenarios for inclusion in this proposal. The Agency agrees with the comments mentioned previously that the majority of vehicles in the U.S. fleet are not currently equipped with sensing systems capable of detecting pedestrians while a vehicle is turning, as they do not have the necessary FOV. The American Automobile Association (AAA)[119] recently conducted PAEB tests, including an S2 scenario where the vehicle is turning right with an adult pedestrian crossing. The PAEB systems in four model year 2019 vehicles that were tested did not react to the test targets during a testing scenario that is similar to NHTSA's S2 scenario described above, resulting in all test vehicles colliding with the pedestrian target. These systems performed better in a scenario that was similar to NHTSA's S1; however, the vehicles avoided a collision with the pedestrian target 40 percent of the time at a 32.2 kph (20 mph) test speed and nearly all the time at a 48.3 kph (30 mph) test speed. Furthermore, in its recent study on PAEB system effectiveness, IIHS found that while AEB with pedestrian detection was associated with significant reductions in pedestrian crash risk (~27 percent) and pedestrian injury crash risk (~30 percent), there was no evidence to suggest that existing systems were effective while the PAEB-equipped vehicle was turning.[120] Considering these findings, NHTSA believes that it is more beneficial at this time to focus our efforts on performing PAEB testing at higher speeds and with various lighting conditions using the proposed S1 and S4 test scenarios.

In the context of the NCAP PAEB testing program, NHTSA is seeking comment on the following:

(23) Is the proposed test speed range, 10 kph (6.2 mph) to 60 kph (37.3 mph), to be assessed in 10 kph (6.2 mph) increments, most appropriate for PAEB test scenarios S1 and S4? Why or why not?

(24) The Agency has proposed to include Scenarios S1 a-e and S4 a-c in its NCAP assessment. Is it necessary for the Agency to perform all test scenarios and test conditions proposed in this RFC notice to address the safety problem adequately, or could NCAP test only certain scenarios or conditions to minimize test burden but still address an adequate proportion of the safety problem? Why or why not? If it is not necessary for the Agency to perform all test scenarios or test conditions, which scenarios/conditions should be assessed? Although they are not currently proposed for inclusion, should the Agency also adopt the false positive test conditions, S1f and S1g? Why or why not?

(25) Given that a large portion of pedestrian fatalities and injuries occur under dark lighting conditions, the Agency has proposed to perform testing for the included test conditions (*i.e.,* S1 a-e and S4 a-c) under dark lighting conditions (*i.e.,* nighttime) in addition to daylight test conditions for test speed range 10 kph (6.2 mph) to 60 kph (37.3 mph). NHTSA proposes that a vehicle's lower beams would provide the source of light during the nighttime assessments. However, if the SV is equipped with advanced lighting systems such as semiautomatic headlamp beam switching and/or adaptive driving beam head lighting system, they shall be enabled to automatically engage during the nighttime PAEB assessment. Is this testing approach appropriate? Why or why not? Should the Agency conduct PAEB evaluation tests with only the vehicle's lower beams and disable or not use any other advanced lighting systems?

(26) Should the Agency consider performing PAEB testing under dark conditions with a vehicle's upper beams as a light source? If yes, should this lighting condition be assessed in addition to the proposed dark test condition, which would utilize only a vehicle's lower beams along with any advanced lighting system enabled to automatically engage, or in lieu of the proposed dark testing condition?

[118] The Agency notes that a similar pass/fail criterion (*i.e.,* a vehicle must meet performance requirements for three out of five trials for a particular test condition to pass the test condition) is included in its LDW test procedure, as referenced earlier.

[119] American Automobile Association (2019, October), *Automatic emergency braking with pedestrian detection, https://www.aaa.com/AAA/common/aar/files/Research-Report-Pedestrian-Detection.pdf.*

[120] Cicchino, J. B (2022, February), *Effects of automatic emergency braking systems on pedestrian crash risk,* Insurance Institute for Highway Safety, *https://www.iihs.org/api/datastoredocument/bibliography/2243.*

Should the Agency also evaluate PAEB performance in dark lighting conditions with overhead lights? Why or why not? What test scenarios, conditions, and speed(s) are appropriate for nighttime (*i.e.,* dark lighting conditions) testing in NCAP, and why?

(27) To reduce test burden in NCAP, the Agency proposed to perform one test per test speed until contact occurs, or until the vehicle's relative impact velocity exceeds 50 percent of the initial speed of the subject vehicle for the given test condition. If contact occurs and if the vehicle's relative impact velocity is less than or equal to 50 percent of the initial SV speed for the given combination of test speed and test condition, an additional four test trials will be conducted at the given test speed and test condition, and the SV must meet the passing performance criterion (*i.e.,* no contact) for at least three out of those five test trials in order to be assessed at the next incremental test speed. Is this an appropriate approach to assess PAEB system performance in NCAP, or should a certain number of test trials be required for each assessed test speed? Why or why not? If a certain number of repeat tests is more appropriate, how many test trials should be conducted, and why?

(28) Is a performance criterion of ''no contact'' appropriate for the proposed PAEB test conditions? Why or why not? Alternatively, should the Agency require minimum speed reductions or specify a maximum allowable SV-to-mannequin impact speed for any or all of the proposed test conditions (*i.e.,* test scenario and test speed combination)? If yes, why, and for which test conditions? For those test conditions, what speed reductions would be appropriate? Alternatively, what maximum allowable impact speed would be appropriate?

(29) If the SV contacts the pedestrian mannequin during the initial trial for a given test condition and test speed combination, NHTSA proposes to conduct additional test trials only if the relative impact velocity observed during that trial is less than or equal to 50 percent of the initial speed of the SV. For a test speed of 60 kph (37.3 mph), this maximum relative impact velocity is nominally 30 kph (18.6 mph), and for a test speed of 10 kph (6.2 mph), the maximum relative impact velocity is nominally 5 kph (3.1 mph). Is this an appropriate limit on the maximum relative impact velocity for the proposed range of test speeds? If not, why? Note that the tests in Global Technical Regulation (GTR) No. 9 for pedestrian crashworthiness protection simulates a pedestrian impact at 40 kph (24.9 mph).

(30) For each lighting condition, the Agency is proposing 6 test speeds (*i.e.,* those performed from 10 to 60 kph (6.2 to 37.3 mph) in increments of 10 kph (6.2 mph)) for each of the 8 proposed test conditions (S1a, b, c, d, and e and S4a, b, and c). This results in a total of 48 unique combinations of test conditions and test speeds to be evaluated per lighting condition, or 96 total combinations for both light conditions. The Agency mentions later, in the ADAS Ratings System section, that it plans to use check marks, as is done currently, to give credit to vehicles that (1) are equipped with the recommended ADAS technologies, and (2) pass the applicable system performance test requirements for each ADAS technology included in NCAP until it issues (1) a final decision notice announcing the new ADAS rating system and (2) a final rule to amend the safety rating section of the vehicle window sticker (Monroney label). For the purposes of providing credit for a technology using check marks, what is an appropriate minimum overall pass rate for PAEB performance evaluation? For example, should a vehicle be said to meet the PAEB performance requirements if it passes two-thirds of the 96 unique combinations of test conditions and test speeds for the two lighting conditions (*i.e.,* passes 64 unique combinations of test conditions and test speeds)?

(31) Given previous support from commenters to include S2 and S3 scenarios in the program at some point in the future and the results of AAA's testing for one of the turning conditions, NHTSA seeks comment on an appropriate timeframe for including S2 and S3 scenarios into the Agency's NCAP. Also, NHTSA requests from vehicle manufacturers information on any currently available models designed to address, and ideally achieve crash avoidance during conduct of, the S2 and S3 scenarios to support Agency evaluation for a future program upgrade.

(32) Should the Agency adopt the articulated mannequins into the PAEB test procedure as proposed? Why or why not?

(33) In addition to tests performed under daylight conditions, the Agency is proposing to evaluate the performance of PAEB systems during nighttime conditions where a large percentage of real-world pedestrian fatalities occur. Are there other technologies and information available to the public that the Agency can evaluate under nighttime conditions?

(34) Are there other safety areas that NHTSA should consider as part of this or a future upgrade for pedestrian protection?

(35) Are there any aspects of NCAP's proposed PAEB test procedure that need further refinement or clarification before adoption? If so, what additional refinement or clarification is necessary, and why?

In addition to the fleet characterization research conducted for this upgrade of NCAP, the Agency is conducting additional research that may be used to support future program enhancements. One such research project is designed to address injuries and fatalities for other vulnerable road users, specifically cyclists.[121] While some PAEB systems may be capable of detecting cyclists and activating to avoid a crash, NHTSA's current PAEB test procedure does not include a specific cyclist component. However, since the number of cyclists killed on U.S. roads continues to rise,[122] the Agency plans to perform research to determine the viability of Euro NCAP's AEB cyclist tests. NHTSA will then compare test data with preliminary crash populations to assess the adequacy of the test procedure for the U.S. vehicle fleet and roadway system. The Euro NCAP test includes four test scenarios: One in which the cyclist crosses in front of the vehicle from the near-side; one in which the cyclist crosses in front of the vehicle from the near-side from behind an obstruction; one in which the cyclist crosses in front of the vehicle from the far-side; and the other in which the cyclist travels in the same direction as the vehicle. The latter test scenario is repeated for both 25 percent and 50 percent overlaps, while the first three scenarios are conducted at 50 percent overlap (*i.e.,* the vehicle strikes the bicyclist at 50 percent of the vehicle's width). In all tests, a cyclist target comprised of an articulating dummy, which replicates the pedaling action of a cyclist, is seated on a bicycle mounted on a moving platform.

NHTSA believes that detecting cyclists is technically more challenging for vehicle AEB systems than detecting pedestrians since cyclists often move at higher speeds. Vehicles must not only be equipped with sensors that have wider fields of view (similar to that required for the turning PAEB test scenarios), but must also process information more quickly as to whether

[121] NHTSA notes that this research will also include motorcycles.

[122] National Center for Statistics and Analysis (2019, June), *Bicyclists and other cyclists: 2017 data* (Traffic Safety Facts. Report No. DOT HS 812 765), Washington, DC: National Highway Traffic Safety Administration.

to alert the driver and/or automatically brake.

In the context of this additional research testing, NHTSA requests comment on the following:

(36) Considering not only the increasing number of cyclists killed on U.S. roads but also the limitations of current AEB systems in detecting cyclists, the Agency seeks comment on the appropriate timeframe for adding a cyclist component to NCAP and requests from vehicle manufacturers information on any currently available models that have the capability to validate the cyclist target and test procedures used by Euro NCAP to support evaluation for a future NCAP program upgrade.

(37) In addition to the test procedures used by Euro NCAP, are there others that NHTSA should consider to address the cyclist crash population in the U.S. and effectiveness of systems?

D. Updating Forward Collision Prevention Technologies

As previously mentioned, NHTSA will retain the currently available ADAS technologies (forward collision warning, crash imminent braking and dynamic brake support) designed to address forward collisions (rear-end crashes) in NCAP's crash avoidance program. As discussed in NHTSA's March 2019 study, these technologies have the potential to prevent or mitigate eight rear-end pre-crash scenarios, which represented approximately 1.70 million crashes annually, on average, or 29.4 percent of all crashes that occurred on U.S. roadways. As shown in Table A–1, these crashes resulted in 1,275 fatalities, on average, and 883,386 MAIS 1–5 injuries annually, which represented 3.8 percent of all fatalities and 31.5 percent of all injuries, respectively.[123]

FCW technology evaluations were introduced into NCAP starting with model year 2011 vehicles,[124] while CIB and DBS systems (referred to collectively as Automatic Emergency Braking (AEB)) were added to the program starting with model year 2018 vehicles.[125] These technologies are not being offered as standard equipment on all passenger vehicles, so it remains important for NCAP to recommend the technologies and inform shoppers which vehicles have the technologies. Further, NHTSA observed performance test failures for each of these technologies during NCAP's model year 2019 vehicle performance verification testing;[126] thus, NCAP should continue to inform shoppers as to which systems perform to NHTSA's benchmark. Nonetheless, as will be discussed in the next few sections, NHTSA believes there are opportunities for updating the current NCAP performance requirements for these three technologies.

1. Forward Collision Warning (FCW)

An FCW system is an ADAS technology that monitors a vehicle's speed, the speed of the vehicle in front of it, and the distance between the two vehicles. If the FCW system determines that the distance from the driver's vehicle to the vehicle in front of it is too short, and the closing velocity between the two vehicles is too high, the system warns the driver of an impending rear-end collision.

Typically, FCW systems are comprised of two components: A sensing system, which can detect a vehicle in front of the driver's vehicle; and a warning system, which alerts the driver to a potential crash threat. The sensing portion of the system may consist of forward-looking radar, lidar, camera systems, or a combination of these. The warning system may provide drivers with a visual display, such as a light on the dash, an audible signal (*e.g.,* buzzer or chime), and/or a haptic signal that provides tactile feedback to the driver (*e.g.,* rapid vibrations of the seat pan or steering wheel) to alert the driver of an impending crash so that they may manually intervene (*e.g.,* apply the vehicle's brakes or make an evasive steering maneuver) to avoid or mitigate the crash.

Currently, NCAP's FCW test procedure[127] consists of three scenarios that simulate the most frequent types of rear-end crashes. These include: Lead vehicle stopped (LVS), lead vehicle decelerating (LVD), and lead vehicle moving (LVM) scenarios. In each scenario, the vehicle being evaluated is the SV, and the vehicle positioned directly in front of the SV, a production mid-size passenger car, is the POV. The time-to-collision (TTC) criteria prescribed for each scenario represent the time needed for a driver to perceive an impending rear-end crash, decide the corrective action, and respond with the appropriate mitigating action. The TTC for each scenario is calculated by considering the speed of the SV relative to the POV at the time of the FCW alert. If the FCW system fails to provide an alert within the required time during testing, the professional test driver brakes or steers away to avoid a collision. A short description of each test scenario and the requirements for a passing result based on TTC is provided below:

- LVS—The SV encounters a stopped POV on a straight road. The SV is moving at 72.4 kph (45 mph), and the POV is stationary. To pass this test, the SV must issue an FCW alert when the TTC is at least 2.1 s.
- LVD—The SV encounters a POV slowing with constant deceleration directly in front of it on a straight road. The SV and POV are both driven at 72.4 kph (45 mph) with an initial headway of 30.0 m (98.4 ft.). The POV then decelerates, braking at a constant deceleration of 0.3g in front of the SV. To pass this test, the SV must issue an FCW alert when the TTC is at least 2.4 s.
- LVM—The SV encounters a slower-moving POV directly in front of it on a straight road. The SV and POV are driven at constant speeds of 72.4 kph (45 mph) and 32.2 kph (20 mph), respectively. To pass this test, the SV must issue an FCW alert when the TTC is at least 2.0 s.

Each scenario is conducted up to seven times. To pass the NCAP system performance criteria, the SV must pass at least five out of seven trials[128] for each of the three test scenarios.

NCAP's FCW test scenarios are directly related to real-world crash data. From its analysis of 2011 to 2015 FARS and GES data, the Agency found that crashes analogous to the LVS test scenario, where a struck vehicle was stopped at the time of impact, occurred in 65 percent of the rear-end crashes studied.[129] The LVD scenario, in which

[123] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653). Washington, DC: National Highway Traffic Safety Administration.

[124] 73 FR 40016 (July 11, 2008).

[125] 80 FR 68618 (Nov. 5, 2015).

[126] *https://www.regulations.gov,* Docket Nos. NHTSA–2010–0093 and NHTSA–2015–0006. (Only one test failure was observed for FCW.)

[127] National Highway Traffic Safety Administration. (2013, February). *Forward collision warning system confirmation test. https://www.regulations.gov.* Docket No. NHTSA–2006–26555–0134.

[128] As noted in the Agency's 2015 AEB final decision notice (80 FR 68618 (Nov. 5, 2015)), the Agency believes passing five out of seven tests successfully discriminates between functional systems versus non-functional systems. To date, the Agency allows two failures out of seven attempts to afford some flexibility in including emerging technologies into the NCAP program. Furthermore, NHTSA test laboratories have experienced unpredictable vehicle responses due to the vehicle algorithm designs. Test laboratories have observed systems that improve their performance with use, systems degrading and shutting down when they do not see other vehicles, and systems failing to re-activate if the vehicle is not cycled through an ignition cycle.

[129] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653),

the struck vehicle was decelerating at the time of impact, occurred in 22 percent of the rear-end crashes, and the LVM scenario, in which the struck vehicle was moving at a constant, but slower, speed compared to the striking vehicle at impact, occurred in 10 percent of the rear-end crashes. Collectively, these test scenarios represented 97 percent of rear-end crashes. With respect to test speed, in its independent review of the 2011–2015 FARS and GES data sets, Volpe concluded that 28 percent of fatal rear-end crashes and 63 percent of all rear-end crashes occurred on roadways with posted speed limits of 72.4 kph (45 mph) or less.

Currently, NHTSA gives credit on its website by assigning a check mark to vehicles equipped with FCW systems that send visual, audible, and/or haptic alerts and meet the TTC requirements. However, the Agency's research has shown that presenting drivers with an audible warning in medium or high urgency situations significantly reduced crash severity relative to visual and tactile (or haptic) warnings, which did not differ.[130] This being said, in a large-scale field test of FCW and LDW systems on model year 2013 Chevrolet and Cadillac vehicles, the University of Michigan Transportation Research Institute (UMTRI) and GM found that GM's Safety Alert Seat, which provides haptic seat vibration pulses, increased driver acceptance of both FCW and LDW systems compared to audible alerts.[131] The study concluded that the FCW system was turned off 6 percent of the time when the Safety Alert Seat was selected (rather than audible alerts), whereas it was turned off 17 percent of the time when only audible alerts were available. In light of these findings, the Agency seeks comment on whether to give credit to vehicles equipped with FCW systems that only provide a passing audible alert, or whether it should also give credit to those systems that only provide passing haptic alerts.[132] If the Agency elects to give credit to vehicles with haptic alerts, are there certain haptic alert types that should be excluded from consideration (*e.g.,* because they may be such a nuisance to drivers that they may be more likely to disable the system)? NHTSA also seeks comment on whether it should no longer give credit to FCW-equipped vehicles that offer only visual FCW alerts.

NCAP's current FCW test procedure states that if an FCW system provides a warning timing adjustment setting for the driver, at least one timing setting must meet the TTC warning criteria specified in the procedure. Therefore, if a vehicle is equipped with a warning timing adjustment, only the most conservative (*i.e.,* earliest) warning setting is tested. Selecting the most conservative setting is beneficial for track testing where the driver of the SV must steer and/or brake to avoid a crash with the POV after the FCW alert is issued. However, the Agency is concerned that many consumers may not adjust the warning timing setting for FCW alerts. Furthermore, consumers that choose to adjust the alert timing may be unlikely to select the earliest setting, as this setting is most likely to result in false positive alerts (*i.e.,* nuisance alerts) during real-world operation.[133] The Agency also recognizes that the earliest FCW setting can be used to pass the NCAP test—essentially allowing a vehicle to get NCAP credit even though it may not otherwise earn credit if the later warning settings are tested. Therefore, by testing the earliest timing adjustment setting, the Agency's FCW performance assessment may not be indicative of many drivers' real-world experiences.

This concern was previously addressed in NHTSA's 2015 AEB final decision notice, but the Agency has not since made updates to its FCW test procedure.[134] In that notice, the Agency stated that because NCAP is a consumer information program, it should test vehicles as delivered, using the factory default FCW warning adjustment setting for FCW and AEB testing, including PAEB. Although the Agency believes there is still merit to testing the default setting, NHTSA tentatively believes testing the middle alert setting may be more appropriate. Selection of the middle or next latest alert setting for testing would harmonize with Euro NCAP's AEB Car-to-Car systems test protocol, thus potentially driving costs down for manufacturers and attempting to ensure that consumers in both the U.S. and European markets benefit from similar FCW system settings.[135] Harmonization was a common theme among commenters responding to NCAP's December 2015 notice, with most vehicle manufacturers, suppliers, and other industry groups requesting that NHTSA harmonize test procedures, test targets, and test requirements with other NCAPs around the world, particularly Euro NCAP. As mentioned earlier, the Bipartisan Infrastructure Law also required that NHTSA consider harmonization with third-party safety rating programs when possible. In light of these considerations, the Agency is proposing that it is most appropriate to test the middle (or next latest) FCW system setting in lieu of the default setting when performing FCW, CIB, DBS, and PAEB NCAP tests on vehicles that offer multiple FCW timing adjustment settings.

FCW systems have been recognized as the first generation of ADAS technologies designed to help drivers avoid an impending rear-end collision. In 2008, when NHTSA decided to include ADAS in the NCAP program, FCW was selected because the Agency believed (1) this technology addressed a major crash problem; (2) system designs existed that could mitigate this safety problem; (3) safety benefit projections were assessed; and (4) performance tests and procedures were available to ensure an acceptable performance level.[136] At the time, the Agency estimated that FCW systems were 15 percent effective in preventing rear-end crashes. More recently, in a 2017 study, IIHS[137] found that FCW systems may be more effective than NHTSA's initial estimates. IIHS found that FCW systems reduced rear-end crashes by 27 percent. Moreover, consumers have shown favorable acceptance of these systems. For instance, in a 2019 survey of more than 57,000 Consumer Reports subscribers, 69 percent of vehicle owners reported that they were satisfied with their

Washington, DC: National Highway Traffic Safety Administration.

[130] Lerner, N., Robinson, E., Singer, J., Jenness, J., Huey, R., Baldwin, C., & Fitch, G. (2014, September), *Human factors for connected vehicles: Effective warning interface research findings* (Report No. DOT HS 812 068), Washington, DC: National Highway Traffic Safety Administration.

[131] Flannagan, C., LeBlanc, D., Bogard, S., Nobukawa, K., Narayanaswamy, P., Leslie, A., Kiefer, R., Marchione, M., Beck, C., and Lobes, K. (2016, February), *Large-scale field test of forward collision alert and lane departure warning systems* (Report No. DOT HS 812 247), Washington, DC: National Highway Traffic Safety Administration.

[132] The Agency would give credit to FCW systems that have both passing audible and haptic alerts if both alert types were available. However, if a vehicle with such a system provided only a passing haptic alert and the Agency decided only to give credit to systems that provided passing audible alerts, then the vehicle would not receive credit as having met the Agency's FCW test requirements.

[133] Nodine, E., Fisher, D., Golembiewski, G., Armstrong, C., Lam, A., Jeffers, M.A., Najm, W., Miller, S., Jackson, S., and Kehoe, N. (2019, May), *Indicators of driver adaptation to forward collision warnings: A naturalistic driving evaluation* (Report No. DOT HS 812 611), Washington, DC: National Highway Traffic Safety Administration.

[134] 80 FR 68614 (Nov. 5, 2015).

[135] European New Car Assessment Programme (Euro NCAP) (2019, July), *Test Protocol—AEB Car-to-Car systems, Version 3.0.2.* See section 7.4.1.1.

[136] 73 FR 40033 (July 11, 2008).

[137] Cicchino, J.B. (2017, February), Effectiveness of forward collision warning and autonomous emergency braking systems in reducing front-to-rear crash rates, *Accident Analysis and Prevention,* 2017 Feb;99(Pt A):142–152. *https://doi.org/10.1016/j.aap.2016.11.009.*

vehicle's FCW technology, 38 percent of vehicle owners said that it had helped them avoid a crash, and 54 percent of them remarked that they trust the system to work every time.[138] As consumer acceptance has been positive, and system performance has improved over the years, fitment rates have also increased. As mentioned previously, less than 0.2 percent of model year 2011 vehicles were equipped with FCW systems compared to 38.3 percent of model year 2018 vehicles.

One limitation of FCW systems is that they are designed to warn the driver, but not to provide significant automatic braking of the vehicle (some FCW systems use haptic brake pulses to alert the driver of a crash-imminent driving situation, but they are not intended to effectively slow the vehicle). Since the introduction of FCW systems into NCAP, active safety systems, such as those with automatic braking capability (*i.e.,* AEB), have entered the marketplace. In a recent study sponsored by GM[139] to evaluate the real-world effectiveness of ADAS technologies (including FCW and AEB) on 3.8 million model year 2013–2017 GM vehicles, UMTRI found that, for frontal collisions, camera-based FCW systems produced an estimated 21 percent reduction in rear-end striking crashes, while the AEB systems studied (which included a combination of camera-only, radar-only, and fused camera-radar systems) produced an estimated 46 percent reduction in the same crash type.[140] Similarly, in a 2017 study, IIHS found that vehicles equipped with FCW and AEB showed a 50 percent reduction for the same crash type.[141] NHTSA is drawing from these research studies, generally, since each has limitations and deviations from how NHTSA might evaluate fleet-wide[142] system effectiveness.

From a functional perspective, research suggests that active braking systems, such as AEB, provide greater safety benefits than corresponding warning systems, such as FCW. However, NHTSA has found that current AEB systems often integrate the functionalities of FCW and AEB into one frontal crash prevention system to deliver improved real-world safety performance and high consumer acceptance. Consequently, the Agency believes that this system integration may have implications for NCAP FCW testing because current NCAP FCW requirements were developed at a time when FCW and AEB functionalities were not always linked. As will be detailed later in this notice, NHTSA believes that FCW could now be considered a component of AEB and PAEB such that FCW operation could be evaluated using NCAP's AEB and PAEB tests.

2. Automatic Emergency Braking (AEB)

To address the rear-end crash problem further, in November 2015, NHTSA published a final decision notice announcing the addition of two AEB technologies, CIB and DBS, into NCAP effective with model year 2018 vehicles.[143]

Unlike FCW systems, AEB systems (*i.e.,* CIB and DBS), are designed to help drivers actively avoid or mitigate the severity of rear-end crashes. CIB systems provide automatic braking when forward-looking sensors indicate that a crash is imminent and the driver has not braked, whereas DBS systems provide supplemental braking when sensors determine that driver-applied braking is insufficient to avoid an imminent crash.

In Consumer Reports' 2019 subscriber survey, 81 percent of vehicle owners reported that they were satisfied with AEB technology, 54 percent said that it had helped them avoid a crash, and 61 percent stated that they trusted the system to work every time.[144] Furthermore, IIHS found in its 2017 study that rear-end collisions decreased by 50 percent for vehicles equipped with AEB and FCW.[145] Similarly, as mentioned earlier, UMTRI[146] found that AEB systems produced an estimated 46 percent reduction in applicable rear-end crashes when combined with a forward collision alert, which alone showed only a 21 percent reduction.[147]

A recent IIHS study[148] of 2009–2016 crash data from 23 States suggested that the increasing effectiveness of AEB technology in certain crash situations is changing the rear-end crash problem. The Institute's analysis provided insight into the performance of current AEB systems and future opportunities for improvement. The study identified the types of rear-end crashes in which striking vehicles equipped with AEB were over-represented compared to those without AEB.[149] For instance, IIHS found that striking vehicles involved in the following rear-end crashes were more likely to have AEB: (1) Where the striking vehicle was turning relative to when it was moving straight; (2) when the struck vehicle was turning or changing lanes relative to when it was slowing or stopped; (3) when the struck vehicle was not a passenger vehicle or was a special use vehicle relative to a passenger car; (4) on snowy or icy roads; or (5) on roads with speed limits of 112.7 kph (70 mph) relative to those with 64.4 to 72.4 kph (40 to 45 mph) speed limits. Overall, the study found that 25.3 percent of crashes where the striking vehicle was equipped with AEB had at least one of these over-represented characteristics, compared with 15.9 percent of impacts by vehicles that were not equipped with AEB.

These results suggest that the tests used to evaluate the performance of AEB systems by the Agency's NCAP and other consumer information programs are influencing the development of countermeasures capable of minimizing the crash problems that they were intended to address. However, the results also imply that AEB systems have not yet provided their full crash reduction potential. While they are effective at addressing the most common rear-end crashes, they are less effective at addressing those crashes that

[138] Consumer Reports (2019, August 5), *Guide to forward collision warning: How FCW helps drivers avoid accidents, https://www.consumerreports.org/car-safety/forward-collision-warning-guide/.*

[139] Leslie, A.J., Kiefer, R.J., Meitzner, M.R., & Flannagan, C.A. (2019), *Analysis of the field effectiveness of General Motors production active safety and advanced headlighting systems,* The University of Michigan Transportation Research Institute and General Motors LLC. UMTRI–2019–6.

[140] The Agency notes that the FCW effectiveness rate (21%) observed by UMTRI is similar to that observed by IIHS in its 2019 study (27%). Differences in data samples and vehicle selection may contribute to the specific numerical differences. Regardless, the AEB effectiveness rate observed by UMTRI (46%) was significantly higher than the corresponding FCW effectiveness rate observed in either the IIHS or UMTRI study.

[141] Low-speed AEB showed a 43% reduction.

[142] The UMTRI study was limited to GM vehicles.

[143] 80 FR 68604 (Nov. 5, 2015). CIB and DBS together are considered Automatic Emergency Braking (AEB).

[144] Consumer Reports, (2019, August 5), *Guide to automatic emergency braking: How AEB can put the brakes on car collisions, https://www.consumerreports.org/car-safety/automatic-emergency-braking-guide/.*

[145] Cicchino, J.B. (2017, February), Effectiveness of forward collision warning and autonomous emergency braking systems in reducing front-to-rear crash rates, *Accident Analysis and Prevention,* 2017 Feb;99(Pt A):142–152, *https://doi.org/10.1016/j.aap.2016.11.009.*

[146] Leslie, A.J., Kiefer, R.J., Meitzner, M.R., & Flannagan, C.A. (2019, September), *Analysis of the field effectiveness of General Motors production active safety and advanced headlighting systems,* The University of Michigan Transportation Research Institute and General Motors LLC, UMTRI–2019–6.

[147] The AEB systems studied by UMTRI consisted of camera-only, radar-only, and fused camera-radar AEB systems, the latter two systems of which also included adaptive cruise control functionality.

[148] Cicchino, J.B. & Zuby, D.S. (2019, August), Characteristics of rear-end crashes involving passenger vehicles with automatic emergency braking, *Traffic Injury Prevention,* 2019, VOL. 20, NO. S1, S112–S118 *https://doi.org/10.1080/15389588.2019.1576172.*

[149] In this instance, over-represented means a higher frequency as a percentage for AEB-equipped vehicles versus non-AEB-equipped vehicles on a normalized basis.

are more atypical. IIHS found that in 2016, nearly 300,000 (15 percent) of the police reported two-vehicle rear-end crashes involved one of the rear-end crashes mentioned above. The Institute suggested that vehicle manufacturers would be encouraged to improve AEB system designs for situations where AEB was over-represented if consumer programs incorporated tests that replicate these rear-end crash events, such as an angled target vehicle that simulates a struck vehicle changing lanes. IIHS cautioned (and NHTSA agrees) that new testing protocols should not drive performance degradation in more typical crash situations, create unintended safety consequences, or adversely affect AEB use due to nuisance activations.

While these recent studies suggest that AEB systems (*i.e.,* CIB and DBS) have collectively been effective in reducing rear-impact crashes, it is not clear how effective each of these systems are as standalone systems, and whether their individual effectiveness may change for certain crash scenarios, environmental conditions, or driver factors (*e.g.,* poor judgement, distraction, etc.). Furthermore, the Agency is not aware of any studies of current-generation AEB systems that have determined the extent to which CIB and DBS individually contributes to crash reduction.

Prior to considering adopting AEB into NCAP, NHTSA conducted a review of 2003–2009 National Automotive Sampling System Crashworthiness Data System (NASS CDS) data to define the target population for rear-end crashes.[150] At the time of the analysis, the Agency concluded that CIB and DBS target crash populations were mutually exclusive. In other words, they included crashes in which the driver either did not brake (CIB) or braked (DBS). The analysis of the crash data showed that the driver braked in approximately half of the crashes and did not brake in the other half. However, in its analysis of the 2011–2015 FARS and GES data sets, Volpe found much more conservative brake rates. The organization found that the driver braked in just 8 percent of rear-end crashes involving fatalities and 20 percent of those crashes involving injuries. The study also showed that the driver made no attempt to avoid the crash (*e.g.,* no braking, steering, accelerating) for 56 percent of the crashes involving fatalities and for 21 percent of those involving injuries.[151] It is possible that the brake rate differed for the two studies because of the target crash population refinements made for NHTSA's original analysis and because of difference in data collection methods between the crash databases. For instance, high-speed crashes were excluded from NHTSA's target crash population review because the AEB systems tested at the time had limited speed reduction capabilities.

From the refined target crash population, NHTSA computed preliminary safety benefits for both CIB and DBS from a limited number of CIB- and DBS-equipped vehicles subjected to early versions of the Agency's test procedures based upon speed reduction capabilities.[152] The Agency recognized that CIB and DBS systems available at the time had limited capabilities and could not address serious crashes where fatalities were likely to occur. Nevertheless, the Agency tentatively found that if a CIB system alone was equipped on all light vehicles, it could potentially prevent approximately 40,000 minor/moderate injuries (AIS 1–2), 640 serious-to-critical injuries (AIS 3–5), and save approximately 40 lives, annually. If a DBS system alone was equipped on all light vehicles, it could potentially prevent approximately 107,000 minor/moderate injuries (AIS 1–2), 2,100 serious-to-critical injuries (AIS 3–5), and save approximately 25 lives, annually. These safety benefits from CIB and DBS were considered incremental to the benefits stemming from an FCW alert.[153]

NHTSA's analysis showed there was merit to performing testing to assess vehicle performance in situations where a driver either does not brake (CIB) or brakes (DBS). Volpe's recent analysis on braking behavior/rate further validates the need to assess CIB and DBS separately. Considering this and the fact that NHTSA cannot currently differentiate the individual effectiveness of CIB and DBS systems, NHTSA tentatively believes NCAP should continue to assess CIB and DBS system performance individually. However, the Agency acknowledges that, because it believes AEB systems have advanced significantly in recent years, it is appropriate at this time to consider revising performance envelopes and dynamic scenarios in NCAP to acknowledge and encourage such advances.

The following sections discuss in detail CIB and DBS systems, and more specifically, NCAP's current test procedures and a potential updated test program for modern AEB systems. The Agency seeks comment on how NCAP can encourage the maximum safety benefits of AEB and potentially reduce the number of tests conducted. Comments are also sought on future suggestions for AEB beyond any near-term upgrade.

a. Dynamic Brake Support (DBS)

In response to an FCW alert or a driver noticing an imminent crash scenario, a driver may initiate braking to avoid a rear-end crash. In situations where the driver's braking is insufficient to prevent a collision, DBS can automatically supplement the driver's braking action to prevent or mitigate the crash. Similar to FCW and CIB systems, DBS systems employ forward-looking sensors such as radar, lidar, and/or vision-based sensors to detect vehicles in the path directly ahead and monitor a vehicle's operating conditions such as speed or brake application. However, DBS systems can actively supplement braking to assist the driver whereas FCW systems serve only to warn the driver of a potential crash threat, and CIB systems are activated when a rear-end crash is imminent, but the driver has not manually applied the vehicle's brakes.[154]

NCAP's current DBS test procedure[155] consists of the same three rear-end crash scenarios specified in the FCW system performance test procedure—LVS, LVD, and LVM, but most of the test speed combinations specified in the DBS test procedure differ (the single exception is that the FCW and DBS test procedures both use an LVM test performed with SV and POV speeds of 72.4 and 32.2 kph (45 and 20 mph), respectively). In addition,

[150] National Highway Traffic Safety Administration (2012, June), *Forward-looking advanced braking technologies research report, https://www.regulations.gov/document?D=NHTSA-2012-0057-0001.*

[151] The Agency notes that for the rear-end pre-crash scenario group, the driver avoidance maneuver was unknown in 25 percent and 54 percent of the FARS and GES crashes, respectively.

[152] National Highway Traffic Safety Administration (2014, August), *Automatic emergency braking system (AEB) research report, https://www.regulations.gov/document?D=NHTSA-2012-0057-0037.*

[153] FCW, CIB, and DBS combined on all light vehicles could potentially prevent approximately 200,000 minor/moderate injuries (AIS 1–2), 4,000 (AIS 3–5) serious injuries, and save approximately 100 lives annually.

[154] DBS systems differ from traditional brake assist systems used with the vehicle's foundation brakes. Whereas both systems rely on brake pedal application rate to determine whether supplemental braking is required, DBS has a lower activation threshold since it also uses information from the aforementioned sensors to verify that more braking is needed.

[155] National Highway Traffic Safety Administration (2015, October), *Dynamic brake support performance evaluation confirmation test for the New Car Assessment Program, http://www.regulations.gov,* Docket No. NHTSA–2015–0006–0026.

the DBS performance assessment includes a Steel Trench Plate (STP) false positive suppression test, which is conducted at two test speeds. This fourth test scenario is used to evaluate the propensity of a vehicle's DBS system to activate inappropriately in a non-critical driving scenario that would not present a safety risk to the vehicle's occupants. For the first three test scenarios, where braking is expected, the SV must provide enough supplemental braking to avoid contact with the POV to pass a trial run. In the case of the DBS false positive test scenario, the performance criterion is minimal to no activation for both test speeds.[156]

As in the FCW system performance tests, the vehicle that is subjected to the DBS test scenarios is the SV. The FCW test procedure (which uses professional drivers for acceleration, braking, and steering during test conduct) stipulates that a mid-size passenger car serve as the POV during testing. The DBS test procedure (which relies solely on the use of a programmable brake controller and the vehicle's DBS system for braking), however, utilizes a surrogate (*i.e.,* target vehicle) to limit the potential for damage to the SV and/or test equipment in the event of a collision.

The target vehicle presently used as the POV by NCAP for the Agency's DBS testing is known as the Subject Surrogate Vehicle, or SSV. The SSV, developed by NHTSA for the purpose of track testing, appears as a ''real'' vehicle to the camera, radar, and lidar sensors used by existing AEB systems. The SSV system is comprised of (a) a shell,[157] which is a visually and dimensionally accurate representation of a passenger car; (b) a slider and load frame assembly to which the shell is attached, (c) a two-rail track on which the slider operates, (d) a road-based lateral restraint track, and (e) a tow vehicle, which pulls the SSV and its peripherals down the test track during trials where the POV (*i.e.,* SSV) must be in motion. A brief discussion on the use of the GVT, discussed earlier in the BSI section, as an alternative to the SSV for future DBS and CIB testing, is included later in this notice.[158]

A short description of each DBS system performance test scenario, and the requirements for a passing result, is provided below:

- Lead Vehicle Stopped (LVS)—The SV encounters a stopped POV on a straight road. The SV is moving at 40.2 kph (25 mph) and the POV is stationary. The SV throttle is released within 500 ms after the SV issues an FCW alert, and the SV brake is applied at a TTC of 1.1 s (*i.e.,* at a nominal headway of 12.2 m (40 ft.)). To pass this test, the SV must not contact the POV.
- Lead Vehicle Decelerating (LVD)—The SV encounters a POV slowing with constant deceleration directly in front of it on a straight road. The SV and POV are both driven at 56.3 kph (35 mph) with an initial headway of 13.8 m (45.3 ft.). The POV brakes are then applied at a constant deceleration of 0.3g in front of the SV. The SV throttle is released within 500 ms after the SV issues an FCW alert, and the SV brakes are applied at a TTC of 1.4 s (*i.e.,* at a nominal headway of 9.6 m (31.5 ft.)). To pass this test, the SV must not contact the POV.
- Lead Vehicle Moving (LVM)—The SV encounters a slower-moving POV directly in front of it on a straight road. In the first test, the SV and POV are driven on a straight road at a constant speed of 40.2 kph (25 mph) and 16.1 kph (10 mph), respectively. In the second test, the SV and POV are driven at a constant speed of 72.4 kph (45 mph) and 32.2 kph (20 mph), respectively. In both tests, the SV throttle is released within 500 ms after the SV issues an FCW alert, and the SV brakes are applied at a TTC of 1 s (*i.e.,* at a nominal headway of 6.7 m (22 ft.) in the first test, and 11.3 m (37 ft.) in the second test). To pass these tests, the SV must not contact the POV.
- Steel Trench Plate (STP) test (to assess false positive suppression)—The SV is driven over a 2.4 m x 3.7 m x 25.4 mm (8 ft. x 12 ft. x 1 in.) steel trench plate at 40.2 kph (25 mph) and 72.4 kph (45 mph). If no FCW alert is issued by a TTC of 2.1 s, the SV throttle is released within 500 ms of a TTC of 2.1 s, and the SV brakes are applied at a TTC of 1.1 s (*i.e.,* at a nominal distance of 12.3 m (40 ft.) from the edge of the STP at 40.2 kph (25 mph), or 22.3 m (73 ft.) at 72.4 kph (45 mph)). To pass this test, the performance criteria is non-activation, as defined above.

To pass NCAP's DBS system performance criteria, the SV must currently pass five out of seven trials for each of the six test conditions.

As previously mentioned, NCAP's LVS, LVM, and LVD test scenarios for its DBS evaluations are similar to those for the FCW assessments and therefore correspond well with real-world crash data and have similar target crash populations. NHTSA's analysis of the 2011–2015 rear-end crash data from FARS and GES showed target crash populations of 65 percent for the LVS scenario, 22 percent for the LVD scenario, and 10 percent for the LVM scenario.[159] Furthermore, Volpe's independent review of the 2011–2015 data sets showed that for rear-end crashes that occurred on roadways with posted speeds of 40.2 kph (25 mph) or less, 56.3 kph (35 mph) or less, and 72.4 kph (45 mph) or less, the fatality rate was 2 percent, 11 percent, and 28 percent, respectively. Additionally, MAIS 1–5 injuries were observed in 6 percent of all rear-end crashes that occurred on roadways with posted speeds of 40.2 kph (25 mph) or less, 30 percent with posted speeds of 56.3 kph (35 mph) or less, and 63 percent with posted speeds of 72.4 kph (45 mph) or less.

b. Crash Imminent Braking (CIB)

If a driver does not take any action to brake when a rear-end crash is imminent, CIB systems utilize the same types of forward-looking sensors used in DBS systems to apply the vehicle's brakes automatically to slow or stop the vehicle. The amount of braking applied varies by manufacturer, and several systems are designed to achieve maximum vehicle deceleration just prior to impact. In reviewing model year 2017–2019 NCAP CIB test data, NHTSA observed a deceleration range of 0.31 to 1.27g during test trials that provided speed reductions capable of satisfying the CIB performance criteria for a given test condition. Unlike DBS systems, which only provide additional braking to supplement the driver's brake input, CIB systems activate when the driver has not applied the brake pedal.

The Agency's current CIB test procedure [160] is comprised of the same

[156] Minimal activation is defined as a peak SV deceleration attributable to DBS intervention that is less than or equal to 1.25 times the average of the deceleration recorded for the vehicle's foundation brake system alone during its approach to the steel trench plate. The 1.25 multiplier serves to provide some system flexibility, meaning a mild DBS intervention is acceptable, but one where the vehicle thinks it must respond to the STP as if it was a real vehicle is not.

[157] The shell is constructed from lightweight composite materials with favorable strength-to-weight characteristics, including carbon fiber, Kevlar®, phenolic, and Nomex honeycomb. It is also wrapped with a commercially available vinyl material to simulate paint on the body panels, rear bumper, and a tinted glass rear window. A foam bumper having a neoprene cover is attached to the rear of the SSV to reduce the peak forces realized immediately after an impact from a test vehicle occurs.

[158] If the Agency decides to assess FCW in separate tests to that for DBS and CIB, those FCW tests would also be conducted using GVT.

[159] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[160] National Highway Traffic Safety Administration. (2015, October). *Crash imminent brake system performance evaluation for the New*

four test scenarios (LVS, LVD, LVM, and the STP false positive suppression test) and accompanying test speeds as set forth in the DBS test procedure. However, the performance criteria vary slightly. The LVM 40.2 kph/16.1 kph (25 mph/10 mph) test condition stipulates that the SV may not contact the POV. The LVS, LVD, and the LVM 72.4 kph/32.2 kph (45 mph/20 mph) test conditions permit SV-to-POV contact but require minimum reductions in the SV speed. In the case of the CIB false positive tests, the performance criterion is little-to-no activation. Similar to NCAP's DBS tests, the SSV is the POV presently used in the program's CIB testing. A short description of each test scenario and the requirements for a passing result is provided below:

- LVS—SV encounters a stopped POV on a straight road. The SV is moving at 40.2 kph (25 mph) and the POV (*i.e.,* the SSV) is stationary. The SV throttle is released within 500 ms after the SV issues an FCW alert. To pass this test, the SV speed reduction attributable to CIB intervention must be ≥15.8 kph (9.8 mph).
- LVD—The SV encounters a POV slowing with constant deceleration directly in front of it on a straight road. The SV and POV are both driven at 56.3 kph (35 mph) with an initial headway of 13.8 m (45.3 ft.). The POV then decelerates, braking at a constant deceleration of 0.3g in front of the SV, after which the SV throttle is released within 500 ms after the SV issues an FCW alert. To pass this test, the SV speed reduction attributable to CIB intervention must be ≥16.9 kph (10.5 mph).
- LVM—The SV encounters a slower-moving POV directly in front of it on a straight road. In the first test, the SV and POV are driven on a straight road at a constant speed of 40.2 kph (25 mph) and 16.1 kph (10 mph), respectively. In the second test, the SV and POV are driven at a constant speed of 72.4 kph (45 mph) and 32.2 kph (20 mph), respectively. In both tests, the SV throttle is released within 500 ms after the SV issues an FCW alert. To pass the first test, the SV must not contact the POV. To pass the second test, the SV speed reduction attributable to CIB intervention must be ≥15.8 kph (9.8 mph).
- STP test (to assess false positive suppression)—The SV is driven towards a steel trench plate at 40.2 kph (25 mph) in one test and 72.4 kph (45 mph) in the other test. If an FCW alert is issued, the SV throttle is released within 500 ms of the alert. If no FCW alert is issued, the throttle is not released until the test's validity period (the time when all test specifications and tolerances must be satisfied) has passed. To pass these tests, the SV must not achieve a peak deceleration equal to or greater than 0.5g at any time during its approach to the steel trench plate.

To pass NCAP's CIB system performance criteria, the SV must pass five out of seven trials for each of the six test conditions.

Similar to FCW and DBS, NCAP's CIB test scenarios correlate to the dynamically distinct rear-end crash data discussed earlier. The Agency's analysis of the 2011–2015 crash data showed that the LVS, LVD, and LVM scenarios represented 65 percent, 22 percent, and 10 percent, respectively, of all rear-end crashes.[161] With respect to test speed, in its independent review of 2011–2015 FARS and GES data sets, Volpe concluded that 2 percent of fatal rear-end crashes and 6 percent of all rear-end crashes occurred on roadways with posted speed limits of 40.2 kph (25 mph) or less. Eleven percent of fatal rear-end crashes and 30 percent of all rear-end crashes occurred on roads with posted speeds of 56.3 kph (35 mph) or less. For posted speeds of 72.4 kph (45 mph) or less, these statistics are 28 percent and 63 percent, respectively.

c. Current State of AEB Technology

When NHTSA's CIB test scenarios were developed, relatively few vehicles were equipped with this technology, and those that were equipped had systems with limited capabilities. Since then, fitment rates for CIB systems have increased significantly. The increased fitment was due in part to an industry voluntary commitment made in March 2016. At that time, 20 vehicle manufacturers, representing more than 99 percent of light motor vehicle sales in the U.S., voluntarily committed to install AEB systems on light motor vehicles.[162] Pursuant to this voluntary commitment, the manufacturers would make FCW and CIB standard on virtually all light-duty vehicles with a gross vehicle weight rating (GVWR) of 3,855.5 kg (8,500 pounds) or less beginning no later than September 1, 2022, and all trucks with a GVWR between 3,856.0 and 4,535.9 kg (8,501 and 10,000 pounds) beginning no later than September 1, 2025. Conforming vehicles must be equipped with (1) an AEB system that earns at least an ''advanced'' rating from IIHS in its front crash prevention track tests and (2) an FCW system that meets the performance requirements specified in two of NCAP's three FCW test scenarios.[163] The manufacturers further pledged to submit annual progress reports, which IIHS and NHTSA agreed to publish. In 2017, the first reporting year, approximately 30 percent of the fleet was equipped with CIB systems (though many of those systems were not designed to meet the voluntary commitment thresholds), whereas participating manufacturers equipped 75 percent of their fleet in 2019.[164]

While the voluntary commitment worked to increase fitment rates, the stringency included in the agreement for AEB systems is lower than that included in NCAP. The voluntary commitment included front crash prevention track tests that differed in stringency from the NCAP performance thresholds, and in number. The Agency was aware of those differences at the time, but considered the voluntary commitment to be a path toward greater fleet penetration.[165]

As fitment has increased, the sensor technology for CIB systems has also advanced significantly. For instance, in 2017, many systems were not designed to meet the voluntary commitment thresholds, whereas in 2019, most vehicles with FCW and CIB systems were able to pass all relevant NCAP test scenarios. NHTSA notes that NCAP's CIB test requirements currently require a speed reduction of at least 15.8 kph (9.8 mph) in the program's LVS test. These test requirements are more stringent than those required by the voluntary commitment, which allow a

Car Assessment Program. http://www.regulations.gov. Docket No. NHTSA–2015–0006–0025.

[161] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[162] Insurance Institute for Highway Safety (2016, March 17), *U.S. DOT and IIHS announce historic commitment of 20 automakers to make automatic emergency braking standard on new vehicles, https://www.iihs.org/news/detail/u-s-dot-and-iihs-announce-historic-commitment-of-20-automakers-to-make-automatic-emergency-braking-standard-on-new-vehicles.*

[163] To achieve an advanced rating in IIHS' front crash prevention track tests, a vehicle's AEB system must show a speed reduction of at least 16.1 kph (10 mph) in either the Institute's 19.3 or 40.2 kph (12 or 25 mph) tests, or a speed reduction of 8.0 kph (5 mph) in both of these tests. *https://www.iihs.org/news/detail/u-s-dot-and-iihs-announce-historic-commitment-of-20-automakers-to-make-automatic-emergency-braking-standard-on-new-vehicles.*

[164] National Highway Traffic Safety Administration (2019, December 17), *NHTSA announces update to historic AEB commitment by 20 automakers, https://www.nhtsa.gov/press-releases/nhtsa-announces-update-historic-aeb-commitment-20-automakers.*

[165] The Agency also believes that its recommendation of AEB systems (*i.e.,* CIB and DBS) that meet NCAP performance criteria on its website since the 2018 model year has further encouraged adoption of these technologies.

vehicle to comply with the memorandum for a speed reduction of 8.0 kph (5 mph) in the IIHS 19.3 or 40.2 kph (12 and 25 mph) LVS tests.[166] For the 2021 model year, the pass rate (as reported by vehicle manufacturers) for NCAP's FCW and CIB tests for vehicles [167] equipped with these technologies and for which manufacturers submitted data was 88.8 percent and 69.5 percent, respectively.[168] Furthermore, NHTSA found that 63 percent of model year 2017 vehicles did not contact the POV in the LVS scenario during the Agency's testing, whereas 100 percent of model year 2021 vehicles did not make contact with the POV when tested.[169] As such, the Agency believes current CIB system performance far exceeds NCAP's current testing requirements, such that it is feasible to update the program's CIB test conditions to further safety improvements. Recent NHTSA research supports this assertion.

d. NHTSA's CIB Characterization Study

Similar to the fleet testing performed for PAEB, the Agency conducted a series of CIB characterization tests using a sample of MY 2020 NCAP test vehicles from various manufacturers. The goal of this testing was to quantify the performance of current CIB systems using the previously defined LVS and LVD test scenarios, but with an expanded set of input conditions. Testing was conducted in accordance with the CIB test procedure prescribed above; however, several scenarios were then repeated to assess how specific procedural changes (*i.e.,* increases in test speed and deceleration magnitude) affected CIB system performance.

- For the additional LVS tests, the Agency incrementally increased the vehicle speed for the LVS test scenario (from 40.2 to 72.4 kph (25 to 45 mph) in 8.0 kph (5 mph) increments), as shown in Table 2 below, to identify when/if the vehicle reached its operational limits and/or did not react to the POV ahead. When insufficient intervention occurred for a given vehicle, the Agency repeated the test scenario at a test speed that was 4.0 kph (2.5 mph) lower.[170] This reduced speed was used to define the system's upper capabilities for the LVS scenario.
- For the additional LVD tests, the Agency evaluated how changes made to either the vehicles' speed (72.4 kph versus 56.3 kph (45 mph versus 35 mph)) or deceleration magnitude (0.5g versus 0.3g) affected CIB performance, as shown in Table 3 below.

Details of NHTSA's CIB characterization study are provided below (with speeds given in kph (mph)):

TABLE 2—NOMINAL LVS MATRIX

SV speed, (kph/mph)	POV speed, (kph/mph)
40.2/25	0/0
48.3/30	0/0
56.3/35	0/0
64.4/40	0/0
72.4/45	0/0

TABLE 3—NOMINAL LVD MATRIX

SV speed, (kph/mph)	POV speed, (kph/mph)	Peak deceleration (g)	Minimum distance, (mft.)
56.3/35	56.3/35	0.3	13.8/45.3
56.3/35	56.3/35	0.5	13.8/45.3
72.4/45	72.4/45	0.3	13.8/45.3

No additional LVM or STP false positive assessments were conducted as part of the Agency's CIB characterization study. There were several reasons for this. First, in its review of the 2011–2015 FARS and GES rear-end crash data sets, NHTSA showed that LVS and LVD rear-end scenarios resulted in the highest number of crashes and MAIS 1–5 injuries. As shown in Table A–1, there were 1,099,868 LVS, 374,624 LVD, and 174,217 LVM crashes annually.[171] Furthermore, there were 561,842 MAIS 1–5 injuries resulting from the LVS crash scenario, 196,731 for LVD, and 97,402 for LVM. The LVS scenario also had the second highest number of fatalities. Secondly, it was unclear whether performing a set of additional STP false positive tests would provide useful data. When the STP test was initially developed, many AEB systems relied solely on radar for lead vehicle detection. Today, most vehicles utilize camera-only or fused systems that rely on both camera and radar. Although the Agency has observed instances of false positive test failures during CIB and DBS NCAP evaluations performed with radar-only systems, none have been observed when camera-only or fused systems were evaluated in the program. While some radar-only systems have had difficulty classifying the STP correctly, camera-only and fused (*i.e.,* camera plus radar) systems have not exhibited this issue.[172] For these reasons, the Agency believes it may be appropriate to remove the false positive STP assessments from NCAP's AEB evaluation matrix in this NCAP update and is seeking comment in that regard.

The Agency chose to increase the test speeds of the scenarios included in its CIB characterization study because, in its independent analysis of the 2011–2015 FARS data set, Volpe found that speeding was a factor in 42 percent of the fatal rear-end crashes.[173] A review of Volpe's analysis also showed that approximately 28 percent of fatalities and 63 percent of injuries in rear-end crashes occurred when the posted speed on roadways is 72.4 kph (45 mph) or less. When the travel speed was reported in FARS and GES, approximately 7 percent of fatal and 34 percent of the police reported real-end crashes resulting in injuries occurred at

[166] Insurance Institute for Highway Safety (2016, March 17), *U.S. DOT and IIHS announce historic commitment of 20 automakers to make automatic emergency braking standard on new vehicles, https://www.iihs.org/news/detail/u-s-dot-and-iihs-announce-historic-commitment-of-20-automakers-to-make-automatic-emergency-braking-standard-on-new-vehicles.*

[167] In this instance, ''vehicles'' refers to the total number of vehicles in the 2021 fleet, and not the total number of vehicle models for that year.

[168] These values assume a fifty percent take rate for vehicles having optional equipment.

[169] No contact was assumed if the test vehicle did not contact the POV in 5 or more of the 7 required trial runs.

[170] Insufficient intervention was defined as a maximum (peak) deceleration of less than 0.5g.

[171] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[172] This is not to suggest that camera systems are superior to radar systems in all tests.

[173] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

speeds of 72.4 kph (45 mph) or less.[174] These data suggested that there was merit to assessing the capabilities of newer vehicles using LVS tests performed at higher speeds since this would allow the Agency to gauge the ability of current-generation CIB systems to address a greater number of rear-end crashes, particularly those that produce the most serious and fatal injuries. The Agency also reasoned that it was most appropriate to increase the test speed in NCAP's LVS scenario, in particular, since this scenario has the potential to require the greatest speed reduction authority to realize potential safety benefits. Historically, it has also been a difficult scenario for forward-looking sensing systems to address, especially at high vehicle speeds.

Although NHTSA acknowledges that the majority of fatal rear-end crashes (72 percent) occurred on roads with posted speeds exceeding 72.4 kph (45 mph), these higher speeds were not assessed as part of the Agency's characterization testing. Prior to testing, the Agency had safety concerns with conducting LVS tests at speeds of 80.5 kph (50 mph) or more due to test track length limitations, inherent safety considerations for laboratory personnel, and potential damage to either the SV or test equipment. That said, as will be discussed later in this section, data collected during the Agency's testing showed that higher test speeds may be feasible, as several vehicles provided complete crash avoidance at 72.4 kph (45 mph).

NHTSA's intent in evaluating a modified LVD scenario was to document the performance of current-generation CIB systems using more demanding LVD-based driving situations. The Agency also planned to use these test results to determine the feasibility of increasing the stringency of NCAP's LVD test. Compared to the LVD test conditions presently specified in NHTSA's CIB test procedure, the modified LVD tests, as shown in Table 3, either (1) maintained the existing 13.8 m (45.3 ft.) SV-to-POV headway and 0.3g POV deceleration profile, but increased the travel speed of both the POV and SV from 56.3 to 72.4 kph (35 to 45 mph), or (2) maintained the existing 13.8 m (45.3 ft.) SV-to-POV headway and existing 56.3 kph (35 mph) POV and SV speeds, but increased the average POV deceleration magnitude to 0.5g.

NHTSA's interest in the first LVD procedural change aligned with that mentioned for the LVS scenario changes—a significant number of injuries and fatalities in rear-end crashes occurred at higher speeds. The second change was made to address situations where the driver of a lead vehicle brakes aggressively, causing the driver of the following vehicle to have even less time to avoid or mitigate the crash than had the lead vehicle braking been at the 0.3g level presently specified. The Agency reasoned that implementing these changes for the LVD scenario would introduce a more stringent scenario than that which is currently prescribed in NHTSA's CIB test procedure, and would thus help the Agency understand the capabilities of current CIB systems more comprehensively.

Test reports related to NHTSA's CIB characterization testing can be found in the docket for this notice.

e. Updates to NCAP's CIB Testing

In general, this study has allowed NHTSA to assess the performance of current CIB systems and evaluate the technology's future potential for the new model years' vehicle fleet. The study showed that many vehicles in today's fleet were able to repeatedly provide complete crash avoidance at higher test speeds, shorter SV-to-POV headways, and generally more aggressive conditions than those specified in the Agency's current NCAP CIB test procedure. This study has also provided the Agency with new ways to consider differentiating CIB systems' performance for NCAP ratings purposes in the future. Furthermore, it has provided the Agency with the underlying support necessary for NCAP to propose adjustments to the current CIB performance requirements to address rear-end crashes that are causing a greater number of injuries and fatalities in the real world. Accordingly, the Agency is proposing to make several changes to its CIB test procedure for this NCAP upgrade. These changes are outlined below for each test scenario. For the LVS scenario, the Agency is proposing the following:

- Increased SV test speeds and an assessment methodology that is similar to that which it proposed to assess PAEB system performance. CIB system performance for the LVS scenario will be assessed over a range of test speeds. The Agency is proposing a minimum SV test speed of 40 kph (24.9 mph), which is similar to that currently specified in NHTSA's CIB test procedure—40.2 kph (25 mph), and a maximum SV test speed of 80.0 kph (49.7 mph). The Agency is proposing to increase the subject vehicle test speed in 10 kph (6.2 mph) increments from the minimum test speed to the maximum test speed for the LVS assessment.

The Agency's characterization testing showed that it is feasible to raise the SV speed in NCAP's LVS test to encourage improved performance of CIB systems. In fact, several vehicles repeatably afforded full crash avoidance (*i.e.,* no contact) at speeds up to 72.4 kph (45 mph) for the LVS test scenario. Furthermore, NHTSA recognizes that Euro NCAP performs its Car-to-Car Rear stationary (CCRs) scenario, which is comparable to the Agency's LVS tests, at speeds as high as 80 kph (49.7 mph) for those systems that offer AEB, which also suggests that higher test speeds are practicable.[175] As such, NHTSA believes that it is appropriate to harmonize with Euro NCAP on the maximum LVS test speed of 80 kph (49.7 mph), as this should better address the higher severity, high-speed crash problem and, in turn, further reduce fatalities and serious injuries. Although Euro NCAP's protocol prescribes a minimum SV test speed of 10 kph (6.2 mph) for the CCRs scenario for AEB systems that also offer FCW, the Agency does not see a reason to perform its LVS test at a speed that is less than that which is specified in its existing test procedure (40.2 kph (25 mph)). Therefore, it is not proposing to harmonize with Euro NCAP with respect to the minimum required test speed.

- A revised performance requirement. In lieu of a speed reduction, as is currently specified in NHTSA's CIB test procedure for the LVS scenario, the SV must avoid making contact with the POV target to pass a test trial. Similar to PAEB, this should limit damage to the SV and POV target during testing and reduce chances that results are questioned or invalidated.
- Changes to the number of test trials required for the LVS scenario. Currently, NHTSA's CIB test procedure requires that a vehicle meet the performance criteria (*i.e.,* specified speed reduction) for five out of seven trials. However, similar to that proposed by NHTSA for its PAEB assessment, the Agency is proposing that only one test trial will be conducted per test speed assessed (*i.e.,* 40, 50, 60, 70, and 80 kph or 24.9, 31.1, 37.3, 43.5, and 49.7 mph) if the SV does not contact the POV target during the first valid trial for each of the test speeds. For a given test condition, the test sequence is initiated at the 40 kph (24.9 mph) minimum

[174] For this crash mode, 62 and 67 percent of the travel speed data is not reported in FARS and GES, respectively.

[175] European New Car Assessment Programme (Euro NCAP) (April 2021), *Test Protocol—AEB Car-to-Car systems, Version 3.0.3.* See section 8.2.3.

speed. To achieve a passing result, the test must be valid (*i.e.,* all test specifications and tolerances satisfied), and the SV must not contact the POV. If the SV does not contact the POV during the first valid test, the test speed is incrementally increased by 10 kph (6.2 mph), and the next test in the sequence is performed. Unless the SV contacts the POV, this iterative process continues until a maximum test speed of 80 kph (31.1 mph) is evaluated. If the SV contacts the POV, and the relative longitudinal velocity between the SV and POV is less than or equal to 50 percent of the initial speed of the SV, the Agency will perform four additional (repeated) test trials at the same speed for which the impact occurred. The SV must not contact the POV for at least three out of the five test trials performed at that same speed to pass that specific combination of test condition and test speed.[176] If the SV contacts the POV during a valid test of a test condition (whether it be the first test performed for a particular test speed or a subsequent test trial at that same speed), and the relative impact velocity exceeds 50 percent of the initial speed of the SV, no additional test trials will be conducted at the given test speed and test condition and the SV is considered to have failed the test condition at that specific test speed.

The Agency is pursuing an assessment approach for the LVS CIB test scenario that is similar to that proposed for PAEB systems in order to reduce test burden, given that additional test speeds are being proposed. NHTSA believes that this alternative approach will continue to ensure that passing CIB systems represent robust designs that will offer a higher level of performance and safety.

For the LVD scenario, the Agency is proposing the following:

- A reduction in SV and POV test speeds. NHTSA's CIB test procedure currently prescribes a test speed of 56 kph (34.8 mph) for the SV and POV in the LVD scenario. Euro NCAP's AEB Car-to-Car systems test protocol, Version 3.0.3, dated April 2021 for the Car-to-Car rear braking (CCRb) specifies an SV speed of 50 kph (31.1 mph). For this upgrade of NCAP, the Agency is proposing to reduce the test speed for the SV and POV to 50 kph (31.1 mph) to harmonize with Euro NCAP.[177] Given additional changes proposed for the SV-to-POV headway and deceleration magnitude (discussed next), NHTSA does not believe the proposed reduction in test speed will lead to an overall reduction in test stringency or loss of safety benefits.

The Agency is also requesting comment on whether it is appropriate to incorporate additional SV test speeds for the LVD test scenario, specifically 60, 70, and 80 kph (37.3, 43.5, and 49.7 mph) or, alternatively, whether testing at only 50 kph (31.1 mph) and 80 kph (49.7 mph) would be sufficient. As mentioned earlier, Volpe's analysis of the 2011–2015 FARS data set showed that the majority of crashes occurred on roads with posted speeds exceeding 72.4 kph (45 mph), suggesting that testing at higher speeds for all CIB test scenarios may be warranted. The Agency has simply not performed testing at 80 kph (49.7 mph) to date because of concerns surrounding laboratories' abilities to safely execute such tests and limited available testing real estate, as this test scenario requires that both the SV and POV be travelling at the same speed at the onset of the test validity period. That being said, NHTSA believes that, (1) given the results from its characterization study, and in particular, the braking performance demonstrated in the LVS tests, (2) the fact that tested vehicles may have higher POV classification confidence for the LVD test compared to the LVS test since the POV is always in motion during the LVD test, and (3) the POV will be the GVT, which relies on a robotic platform for movement, rather than the SSV which must be towed along a monorail secured to the test track, vehicles in the current fleet will likely also perform well in higher speed LVD tests. To validate this assumption, NHTSA will be conducting research next year to assess vehicle performance at speeds ranging from 50 kph (31.1 mph) to 80 kph (49.7 mph) for 12 and 40 m (39.4 and 131.2 ft.) headways and POV deceleration magnitudes of 0.4 and 0.5 g for the LVD CIB test scenario. Pending the outcome of that research, the Agency may consider adopting additional higher tests speeds (*i.e.,* 60, 70, and/or 80 kph (37.3, 43.5, and/or 49.7 mph)) for the LVD test scenario in NCAP. The Agency requests comment on what SV-to-POV headway and deceleration magnitude(s) would be appropriate if the Agency was to adopt any or all of these additional test speeds. If additional test speeds are adopted, the Agency would implement an assessment methodology similar to that proposed for the CIB LVS test scenario, whereby NHTSA would increase the SV test speed in 10 kph (6.2 mph) increments from the minimum test speed to the maximum test speed for the LVD assessment.

- A reduction in SV-to-POV headway. NHTSA's CIB test procedure currently specifies a 13.8 m (45.3 ft.) SV-to-POV headway for the LVD scenario. The Agency is proposing to reduce the prescribed headway to 12 m (39.4 ft.) to harmonize with Euro NCAP's CCRb scenario. Given the proposed test speed reduction, the Agency believes it is appropriate to also reduce the headway to maintain similar stringency with its current LVD test condition. Whereas Euro NCAP also specifies an additional SV-to-POV headway of 40 m (131.2 ft.), the Agency is not proposing to conduct this additional assessment as part of this proposal. NHTSA does not believe there would be a safety benefit to adopting 40 m (131.2 ft.) as an additional, and less stringent, headway. Therefore, it would serve to increase the test burden unnecessarily.
- An increase in deceleration magnitude. The Agency is proposing to increase the POV deceleration magnitude currently specified in its CIB test procedure for the LVD scenario from 0.3 g to 0.5 g. In the Agency's CIB characterization study, some vehicles repeatably afforded full crash avoidance (*i.e.,* no contact) for all trials when the POV executed a 0.5 g braking maneuver in the LVD condition with a SV test speed of 35 mph and SV-to-POV headway of 13.8 m (45.3 ft.). Although the test speed used in the Agency's study was slightly lower than that which the Agency is proposing for the LVD test condition, and the SV-to-POV headway was slightly longer, NHTSA believes that it is reasonable to adopt a higher POV deceleration magnitude for its future LVD testing. The Agency notes that a deceleration of 0.5 g falls within the range of deceleration magnitudes prescribed by Euro NCAP in its AEB Car-to-Car systems test protocol, Version 3.0.3, dated April 2021 for the CCRb scenario. In its CCRb test, Euro NCAP specifies POV deceleration magnitudes of 2 m/s^2 and 6 m/s^2 (approximately 0.2 to 0.6 g) for an SV-to-POV headway of 12 m (39.4 ft.) and SV test speed of 50 kph (31.1 mph). As the Agency has proposed this reduced headway and test speed for its LVD testing, it reasons that adopting a 0.5 g POV deceleration magnitude is also practicable. The Agency is not proposing 0.6 g as the POV deceleration magnitude in its LVD

[176] The Agency notes that a similar pass/fail criterion (*i.e.,* a vehicle must meet performance requirements for three out of five trials for a particular test condition to pass the test condition) is included in its LDW test procedure, as referenced earlier.

[177] European New Car Assessment Programme (Euro NCAP) (April 2021), *Test Protocol—AEB Car-to-Car systems, Version 3.0.3.* See section 8.2.5.

test because it has observed instances where the tires on the POV target developed flat spots during research testing conducted with the Guided Soft Target (GST) system [178] to assess Traffic Jam Assist (TJA) systems. The TJA testing required a braking maneuver for the lead vehicle decelerates, accelerates, then decelerates (LVDAD) scenario that is similar to that specified in the Agency's CIB LVD test.[179] During this testing, NHTSA also found that it was more difficult to achieve and accurately control deceleration when braking maneuvers higher than 0.5 g were used.[180] Extensive tuning efforts related to the GST brake applications were made in an attempt to rectify the problems encountered, but these adjustments were unable to consistently satisfy the test tolerances associated with 0.6 g POV deceleration for the LVDAD test and a recommendation was made to reduce the maximum nominal POV deceleration from 0.6 g to 0.5 g for future testing. In its report findings, the Agency also noted that a deceleration of 0.6 g is not only very close to the maximum braking capability of the GST's robotic platform used by the Agency, it is also very close to the default magnitude used by the LPRV during an emergency stop (maximum deceleration). As such, the Agency concluded that a decrease in maximum POV deceleration should also reduce equipment wear, particularly for the system's tires and braking components, thus improving test efficiency. This being said, the Agency acknowledges that newer robotic platforms designed to provide greater capabilities, are now becoming available, which may resolve the issues observed in the Agency's TJA testing. As such, the Agency is requesting comment on whether it is feasible to adopt a POV deceleration magnitude of 0.6 g in lieu of 0.5 g, as proposed.

• An alternative performance criterion. In lieu of a speed reduction, as is currently specified in NHTSA's CIB test procedure for the LVD scenario, the vehicle must avoid making contact with the POV target to pass a test trial.

• Changes to the number of test trials required for the LVD scenario. NHTSA is adopting an approach to conducting test trials that is identical to that described above for the CIB LVS scenario, regardless of the number of test speeds adopted (*i.e.,* one speed, 50 kph (31.1 mph); two speeds, 50 kph (31.1 mph) and 80 kph (49.7 mph); or four speeds, 50, 60, 70, and 80 kph (31.1, 37.3, 43.5, and 49.7 mph)). If only one or two test speeds are selected for inclusion, the Agency is seeking comment on whether it is more appropriate to alternatively require 7 trials for each test speed, and require that 5 out of the 7 trials conducted pass the ''no contact'' performance criterion.

For the LVM scenario, the Agency is proposing the following:

• Increased SV test speeds. NHTSA is proposing to assess CIB system performance for the LVM scenario over a range of test speeds, similar to that proposed for the LVS scenario. The Agency is proposing a minimum SV test speed of 40 kph (24.9 mph), which is nearly equivalent to the 40.2 kph (25 mph) test speed currently specified in NHTSA's CIB test procedure, and a maximum SV test speed of 80 kph (49.7 mph), which is slightly higher than the 72.4 kph (45 mph) specified for the second LVM test condition in NHTSA's current CIB test procedure. The Agency is proposing to increase the SV test speed in 10 kph (6.2 mph) increments from the minimum test speed to the maximum test speed for the LVM assessment.

The Agency did not perform additional LVM testing as part of its CIB characterization study. Nonetheless, NHTSA believes that it is feasible to raise the SV speed in NCAP's LVM test to encourage improved performance of CIB systems, as the Agency's current CIB LVM tests (conducted with an SV speed of 72.4 kph (45 mph) and POV speed of 32.2 kph (20 mph)) have shown that many vehicles are able to stop without contacting the POV target for each of the required test trials. Furthermore, NHTSA recognizes that Euro NCAP performs its Car-to-Car Rear moving (CCRm) scenario, which is comparable to the Agency's LVM tests, at speeds as high as 80 kph (49.7 mph), which also suggests that higher SV test speeds are practicable.[181] As such, NHTSA believes that it is appropriate to harmonize with Euro NCAP on the maximum SV test speed of 80 kph (49.7 mph) in the Agency's LVM test, as this should also address high-speed crashes and thus further reduce fatalities and serious injuries. Although Euro NCAP's protocol prescribes a minimum SV test speed of 30 kph (18.6 mph) for the CCRm scenario for vehicles that have AEB systems,[182] the Agency does not see a reason to perform its LVM test at a speed that is less than that which is specified in its existing test procedure (40.2 kph (25 mph)). Therefore, it is not proposing to harmonize with Euro NCAP with respect to the minimum required test speed.

• An alternative POV test speed for all test conditions. While the Agency's CIB test procedure currently specifies a POV test speed of 16.1 kph (10 mph) when the SV speed is 40.2 kph (25 mph) and a POV test speed of 32.2 kph (20 mph) when the SV speed is 72.4 kph (45 mph), the Agency is proposing to use a POV test speed of 20 kph (12.4 mph) for every SV test speed that will be assessed for the LVM scenario; 40 to 80 kph (24.9 to 49.7 mph), increased in 10.0 kph (6.2 mph) increments. NHTSA recognizes that Euro NCAP's CCRm protocol specifies a POV test speed of 20 kph (12.4 mph), and this POV speed is stipulated for similar testing conducted by various other vehicle safety ratings programs. With this proposed NCAP upgrade, NHTSA sees no reason to deviate from the other testing organizations with respect to the POV speed for its LVM test.

• A performance criterion of ''no contact''. In lieu of a speed reduction, as is currently specified in NHTSA's CIB test procedure for the Agency's higher speed LVM scenario (*i.e.,* POV of 72.4 kph (45 mph) and POV speed of 32.2 kph (20 mph)), the SV must avoid making contact with the POV target to pass a test trial for each test speed assessed for the LVM scenario; 40 to 80 kph (24.9 to 49.7 mph), increased in 10 kph (6.2 mph) increments.

• Changes to the number of test trials required for the LVM scenario. NHTSA is adopting an approach to conducting test trials that is identical to that described above for the CIB LVS scenario. For the proposed CIB LVM tests, the Agency would require one test trial per SV speed increment, and four repeat trials in the event of a test failure for instances where the SV has a relative velocity at impact that is equal to or less than 50 percent of the initial speed.

NHTSA has chosen to harmonize with Euro NCAP in many respects since it

[178] The GST system is comprised of two main parts—a low profile robotic vehicle (LPRV), and a global vehicle target (GVT), which is secured to the top of the LPRV.

[179] Fogle, E.E., Arquette, T.E. (TRC), and Forkenbrock, G.J. (NHTSA), (2021, May), *Traffic Jam Assist Draft Test Procedure Performability Validation* (Report No. DOT HS 812 987), Washington, DC: National Highway Traffic Safety Administration.

[180] From Section 4.1 of DOT HS 812 987—''POV deceleration validity check failures occurred during six trials of the eight LVDAD trials performed. Four of the seven 0.6 g failures were because the POV was unable to achieve the minimum deceleration threshold of 0.55 g. The remaining three 0.6 g failures were because the POV was unable to maintain a minimum average deceleration of at least 0.55 g.''

[181] European New Car Assessment Programme (Euro NCAP) (April 2021), *Test Protocol—AEB Car-to-Car systems, Version 3.0.3.* See section 8.2.3.

[182] The Agency notes that the minimum SV test for vehicles equipped with only FCW (and no AEB) is 50 kph (31.1 mph).

recognizes that the rear-end crash problem, as defined by the most frequently occurring and dynamically distinct pre-crash scenarios, could be changing as AEB-equipped vehicles become more prolific in the fleet. Accordingly, the Agency believes that it is beneficial to standardize the current CIB test specifications with other consumer information programs and focus resources on emerging trends.[183] However, the Agency also notes that it will consider making additional updates to its CIB test evaluation as the crash problem evolves.

f. Updates to NCAP's DBS Testing

NHTSA did not conduct any testing, as part of its characterization study, to evaluate DBS system performance capabilities beyond what is currently stipulated in NCAP's DBS test procedure. However, the Agency notes that its CIB and DBS test procedures are currently aligned with respect to test scenarios, test speeds, headways, etc. Differences exist only with respect to the use of an SV manual brake application (*i.e.,* for DBS) and most performance criterion. NHTSA's DBS test procedure currently specifies ''no contact'' as the performance criterion for all DBS test conditions, whereas the Agency's CIB test procedure currently requires a specified speed reduction for each of the CIB test conditions (with the exception of the lower speed LVM condition where the POV speed is 16.1 kph (10 mph) and the SV speed is 40.2 kph (25 mph), which requires ''no contact''). Therefore, NHTSA believes it is reasonable to adopt the CIB test conditions (*i.e.,* test speeds, headways, etc.) for the comparable DBS test conditions. However, given the Agency's proposal to embrace the more stringent ''no contact'' performance criterion for each of the CIB test conditions, and for the additional reasons mentioned previously, the Agency also believes, as suggested prior, that there may be merit to removing the DBS test conditions from NCAP entirely to reduce test burden and the associated cost.

In its comments to the NCAP's December 2015 notice, the Alliance [184] stated that since crash avoidance (*i.e.,* no vehicle contact) is the desired outcome for all imminent rear-end crash events, if an SV avoids contact with the POV in all CIB tests, DBS testing should not be necessary. Although NHTSA agrees with the Alliance's rationale in principle, the Agency also believes there is merit to ensuring that both AEB systems perform as designed and help the driver to mitigate or prevent the crash. The Agency reasons that it is possible for the driver to apply the brakes, but with a magnitude that does not result in achieving the vehicle's maximum crash avoidance potential (*i.e.,* deceleration). In the past, some manufacturers assumed the driver was in control when the brake pedal was depressed and would not override the driver's input when necessary to avoid a crash. Accordingly, NHTSA hesitates to assume that if CIB systems work effectively during testing, then DBS systems will automatically do so as well.

In light of these considerations, the Agency is tentatively proposing to retain both CIB and DBS system performance tests in NCAP, and to align all test conditions for comparable test scenarios (*e.g.,* SV and POV test speeds, headway, etc.) to evaluate whether the DBS system will provide supplemental braking if the driver brakes but additional braking is warranted. For this testing, the Agency is proposing to adopt an assessment approach for DBS that is identical to that described previously for PAEB and CIB. The Agency would require one test trial per speed for each test scenario, and four repeated trials for any specific test condition and speed combination that results in a test failure and where the SV has a relative velocity at impact that is equal to or less than 50 percent of the initial speed. Speeds will be increased in 10 kph (6.2 mph) increments from the minimum test speed to the maximum test speed. However, the Agency is also requesting comment on whether removal of the DBS test scenarios from NCAP would be more appropriate.

As an alternative to retaining all DBS tests in NCAP, or removing the DBS performance evaluations from NCAP entirely, the Agency believes it may be more reasonable to conduct only the LVS and LVM tests at the highest two test speeds proposed for CIB—70 and 80 kph (43.5 and 49.7 mph)—to ensure system functionality and that the SV will not suppress AEB operation when the driver applies the vehicle's foundation brakes. The Agency would also consider conducting the LVD DBS test at 70 and 80 kph (43.5 and 49.7 mph) if the Agency decides to also adopt these test speeds for the related CIB test. Comments are requested on this alternative proposal and whether an alternative assessment method would be more appropriate if any or all of the DBS test scenarios were conducted only at the two highest test speeds. For a more limited speed assessment of the two highest test speeds, 70 and 80 kph (43.5 and 49.7 mph), instead of up to four test speeds (50, 60, 70, and 80 kph (31.1, 37.3, 43.5, and 49.7 mph)) for LVD, or five test speeds (40, 50, 60, 70, and 80 kph (24.9, 31.1, 37.3, 43.5, and 49.7 mph)) for LVS and LVM), should the Agency require one trial per test condition (*i.e.,* align with the assessment method outlined for the other AEB test conditions) or multiple trials? If multiple trials were to be required, how many would be appropriate, and what would be an acceptable pass rate?

If the Agency continues to perform DBS testing in NCAP, it also proposes to revise when the manual (robotic) brake application is initiated. The current DBS test procedure prescribes this shall occur at specific TTCs per test scenario: 1.1 seconds (LVS), 1.0 seconds (LVM), and 1.4 second (LVD). The proposed revision would initiate manual braking at a time that corresponds to 1.0 second after the FCW alert is issued for all DBS test scenario and speed combinations, regardless of whether a CIB activation occurs after the FCW alert but before initiation of the manual brake application. The Agency reasons that this change is more representative of real-world use and driving conditions, and is in basic agreement with the approach specified for FCW performance evaluations in Euro NCAP's AEB Car-to-Car systems test protocol.[185] Alternatively, the Agency requests comment on appropriate TTCs for the modified test conditions.

g. Updates to NCAP's FCW Testing

As mentioned earlier, NHTSA is proposing to consolidate its FCW and CIB tests such that the CIB tests will be used as an indicant of FCW operation. The Agency is also proposing to similarly assess FCW in the context of its PAEB tests. NHTSA believes there is merit to assessing the presence of an FCW alert within the CIB and PAEB test because operation of FCW and AEB/PAEB systems, in the test scenarios to be used by NCAP, are complementary

[183] Cicchino, J.B. & Zuby, D.S. (2019, August), Characteristics of rear-end crashes involving passenger vehicles with automatic emergency braking, *Traffic Injury Prevention,* 2019, VOL. 20, NO. S1, S112–S118, *https://doi.org/10.1080/15389588.2019.1576172.*

[184] The Agency notes that the Alliance of Automobile Manufacturers (The Alliance) merged with Global Automakers in January 2020 to create the Alliance for Automotive Innovation (Auto Innovators). Both automotive industry groups separately submitted comments to the December 2015 notice.

[185] European New Car Assessment Programme (Euro NCAP) (April 2021), *Test Protocol—AEB Car-to-Car systems, Version 3.0.3.* See Annex A.

and fundamentally intertwined. Also, combining the Agency's FCW tests with those used to assess AEB system performance would reduce test burden. The Agency proposes that it would evaluate the presence of a vehicle's FCW system during its CIB tests by requiring the SV accelerator pedal be fully released within 500 ms after the FCW alert is issued. If no FCW alert is issued during a CIB test, the SV accelerator pedal will be fully released within 500 ms after the onset of CIB system braking.[186] Here, the onset of CIB activation is taken to be the instant SV deceleration reaches at least 0.5g. If no FCW alert is issued and the vehicle's CIB system does not offer any braking, release of the SV accelerator pedal will not be required prior to impact with the POV. The Agency is also proposing to make similar procedural changes to its PAEB test procedure. NHTSA is seeking comment as to whether the proposed FCW assessment method is reasonable. Furthermore, given that most FCW systems are currently able to pass all relevant NCAP test scenarios, as mentioned earlier, the Agency believes that, as an alternative to integrating the assessment of FCW into the Agency's CIB tests, it may be feasible for NCAP to perform one FCW test that could serve as an indicant of FCW system performance (while still retaining the previously-stated accelerator pedal release timing to ensure CIB activation is not unintentionally suppressed). This would also reduce test burden. If the Agency were to choose one of the proposed CIB test scenarios to adopt for an FCW test to assess the performance of FCW systems, which CIB test scenario do commenters believe would be most appropriate and why?

The Agency notes that if it maintains any or all of the FCW test scenarios that are currently included in its FCW test procedure, it proposes to align the corresponding maximum SV test speeds, POV speeds, headway, POV deceleration magnitude, etc., as applicable, with the included CIB tests, similar to that which it has proposed for the DBS tests. Accordingly, the Agency would adopt the following for the FCW tests:

- LVS—SV speed of 80 kph (49.7 mph); POV is stationary.
- LVD—SV and POV speed of 50 kph (31.1 mph) or up to 80 kph (49.7 mph), depending on the final test speed adopted for the CIB LVD scenario; a 12 m (39.4 ft.) SV-to-POV headway; and a POV deceleration magnitude of 0.5 g.
- LVM—SV speed of 80 kph (49.7 mph); POV speed of 20 kph (12.4 mph).

If the Agency continues to conduct separate FCW assessments, it will need to revise the prescribed TTCs currently used to assess FCW performance to align with the revised test scenario and speed combinations.[187] Given the Agency's thoughts about FCW–AEB integration and the revised test conditions that would be adopted for any future FCW tests, NHTSA requests comment on what TTC would be appropriate for each test scenario. Although the Agency is proposing to adopt an assessment approach for FCW that is identical to that described previously for PAEB, CIB, and DBS,[188] it is also requesting comment on whether an alternative assessment method would be appropriate in instances where it retains one or more FCW scenarios that are performed at a single test speed. In such instances, should the Agency require one trial per test condition (*i.e.,* align with the assessment method outlined for the other AEB test conditions) or multiple trials? If multiple trials were to be required, how many would be appropriate, and what would be an acceptable pass rate?

h. Regenerative Braking

In addition to the FCW alert setting, discussed earlier, there are additional system settings that the Agency must now consider during its AEB and PAEB testing. One such setting is that for regenerative braking. Regenerative braking, which has become more common as electric vehicles have begun to proliferate the fleet, can slow the vehicle when the throttle is released. As such, when the throttle is fully released upon the issuance of the FCW alert in the Agency's AEB and PAEB testing, vehicle speed can reduce significantly prior to the onset of braking associated with these technologies, particularly in instances where the FCW alert is issued early. For vehicles with regenerative braking that have multiple settings (*e.g.,* nominal, more aggressive, less aggressive), the Agency is proposing to use the ''off'' setting or the setting that provides the lowest deceleration when the accelerator is fully released in its AEB and PAEB tests.[189] Although NHTSA reasons that the nominal setting may be the setting most commonly chosen by a typical driver, it prefers the least aggressive setting, as it would be more indicative of ''worst case''. Selecting a setting that affords the lowest deceleration allows the vehicle to travel faster at the onset of braking associated with AEB and PAEB. This approach would produce a situation that is more comparable to that for vehicles that do not have regenerative braking.

The Agency believes that regenerative braking may also introduce complications for the Agency's DBS tests (if the DBS tests are retained in NCAP). NHTSA reasons that some vehicles may offer regenerative braking that is already so high that there would be only a relatively small boost in braking from the braking actuator (acting to provide a combined 0.4 g deceleration). For instance, if the regenerative braking from simply releasing the accelerator pedal results in 0.3 g braking, the additional braking required to get to 0.4 g from the actuator would be a very low force and/or brake pedal displacement. The Agency is requesting comment on whether regenerative braking may introduce additional testing issues and on any recommendations for test procedural changes to rectify possible testing issues related to regenerative braking.

With respect to FCW, CIB, and DBS testing in NCAP, NHTSA is seeking comment on the following:

(38) For the Agency's FCW tests:

—If the Agency retains one or more separate tests for FCW, should it award credit solely to vehicles equipped with FCW systems that provide a passing audible alert? Or, should it also consider awarding credit to vehicles equipped with FCW systems that provide passing haptic alerts? Are there certain haptic alert types that should be excluded from consideration (if the Agency was to award credit to vehicles with haptic alerts that pass NCAP tests) because they may be a nuisance to drivers such that they are more likely to disable the system? Do commenters

[186] Previous NHTSA research indicates that human drivers are capable of releasing the accelerator pedal within 500 ms after returning their eyes to a forward-facing viewing position in response to an FCW alert. Forkenbrock, G., Snyder, A., Hoover, R., O'Harra, B., Vasko, S., Smith, L. (2011, July), *A Test Track Protocol for Assessing Forward Collision Warning Driver-Vehicle Interface Effectiveness* (Report No. DOT HS 811 501), Washington, DC: National Highway Traffic Safety Administration.

[187] To pass a test trial, the vehicle must issue the FCW alert on or prior to the prescribed time-to-collision (TTC) specified for each of the three FCW test scenarios.

[188] In essence, the Agency would require one test trial per speed for each test scenario and four repeat trials in the event of a test failure for instances where the SV has a relative velocity at impact that is equal to or less than 50 percent of the initial speed. Speeds will be increased in 10 kph (6.2 mph) increments from the minimum test speed to the maximum test speed.

[189] The Agency does not plan to make any procedural modifications for vehicles that have regenerative braking that cannot be switched off or adjusted, as those vehicles should operate similarly in the real world.

believe that haptic alerts can be accurately and objectively assessed? Why or why not? Is it appropriate for the Agency to refrain from awarding credit to FCW systems that provide only a passing visual alert? Why or why not? If the Agency assesses the sufficiency of the FCW alert in the context of CIB (and PAEB) tests, what type of FCW alert(s) would be acceptable for use in defining the timing of the release of the SV accelerator pedal, and why?

—Is it most appropriate to test the middle (or next latest) FCW system setting in lieu of the default setting when performing FCW and AEB (including PAEB) NCAP tests on vehicles that offer multiple FCW timing adjustment settings? Why or why not? If not, what use setting would be most appropriate?

—Should the Agency consider consolidating FCW and CIB testing such that NCAP's CIB test scenarios would serve as an indicant of FCW operation? Why or why not? The Agency has proposed that if it combines the two tests, it would evaluate the presence of a vehicle's FCW system during its CIB tests by requiring the SV accelerator pedal be fully released within 500 ms after the FCW alert is issued. If no FCW alert is issued during a CIB test, the SV accelerator pedal will be fully released within 500 ms after the onset of CIB system braking (as defined by the instant SV deceleration reaches at least 0.5g). If no FCW alert is issued and the vehicle's CIB system does not offer any braking, release of the SV accelerator pedal will not be required prior to impact with the POV. The Agency notes that it has also proposed these test procedural changes for its PAEB tests as well. Is this assessment method for FCW operation reasonable? Why or why not?

—If the Agency continues to assess FCW systems separately from CIB, how should the current FCW performance criteria (*i.e.,* TTCs) be amended if the Agency aligns the corresponding maximum SV test speeds, POV speeds, SV-to-POV headway, POV deceleration magnitude, etc., as applicable, with the proposed CIB tests, and why? What assessment method should be used—one trial per scenario, or multiple trials, and why? If multiple trials should be required, how many would be appropriate, and why? Also, what would be an acceptable pass rate, and why?

—Is it desirable for NCAP to perform one FCW test scenario (instead of the three that are currently included in NCAP's FCW test procedure), conducted at the corresponding maximum SV test speed, POV speed, SV-to-POV headway (as applicable), POV deceleration magnitude, etc. of the proposed CIB test to serve as an indicant of FCW system performance? If so, which test scenario from NCAP's FCW test procedure is appropriate?

—Are there additional or alternative test scenarios or test conditions that the Agency should consider incorporating into the FCW test procedure, such as those at even higher test speeds than those proposed for the CIB tests, or those having increased complexity? If so, should the current FCW performance criteria (*i.e.,* TTCs) and/or test scenario specifications be amended, and to what extent?

(39) For the Agency's CIB tests:

—Are the SV and POV speeds, SV-to-POV headway, deceleration magnitude, etc. the Agency has proposed for NCAP's CIB tests appropriate? Why or why not? If not, what speeds, headway(s), deceleration magnitude(s) are appropriate, and why? Should the Agency adopt a POV deceleration magnitude of 0.6 g for its LVD CIB test in lieu of 0.5 g proposed? Why or why not?

—Should the Agency consider adopting additional higher tests speeds (*i.e.,* 60, 70, and/or 80 kph (37.3, 43.5, and/or 49.7 mph)) for the CIB (and potentially DBS) LVD test scenario in NCAP? Why or why not? If additional speeds are included, what headway and deceleration magnitude would be appropriate for each additional test speed, and why?

—Is a performance criterion of ''no contact'' appropriate for the proposed CIB and DBS test conditions? Why or why not? Alternatively, should the Agency require minimum speed reductions or specify a maximum allowable SV-to-POV impact speed for any or all of the proposed test conditions (*i.e.,* test scenario and test speed combination)? If yes, why, and for which test conditions? For those test conditions, what speed reductions would be appropriate? Alternatively, what maximum allowable impact speed would be appropriate?

(40) For the Agency's DBS tests:

—Should the Agency remove the DBS test scenarios from NCAP? Why or why not? Alternatively, should the Agency conduct the DBS LVS and LVM tests at only the highest test speeds proposed for CIB—70 and 80 kph (43.5 and 49.7 mph)? Why or why not? If the Agency also adopted these higher tests speeds (70 and 80 kph (43.5 and 49.7 mph)) for the LVD CIB test, should it also conduct the LVD DBS test at these same speeds? Why or why not?

—If the Agency continues to perform DBS testing in NCAP, is it appropriate to revise when the manual (robotic) brake application is initiated to a time that corresponds to 1.0 second after the FCW alert is issued (regardless of whether a CIB activation occurs after the FCW alert but before initiation of the manual brake application)? If not, why, and what prescribed TTC values would be appropriate for the modified DBS test conditions?

(41) Is the assessment method NHTSA has proposed for the CIB and DBS tests (*i.e.,* one trial per test speed with speed increments of 10 kph (6.2 mph) for each test condition and repeat trials only in the event of POV contact) appropriate? Why or why not? Should an alternative assessment method such as multiple trials be required instead? If yes, why? If multiple trials should be required, how many would be appropriate, and why? Also, what would be an acceptable pass rate, and why? If the proposed assessment method is appropriate, it is acceptable even for the LVD test scenario if only one or two test speeds are selected for inclusion? Or, is it more appropriate to alternatively require 7 trials for each test speed, and require that 5 out of the 7 trials conducted pass the ''no contact'' performance criterion?

(42) The Agency's proposal to (1) consolidate its FCW and CIB tests such that the CIB tests would also serve as an indicant of FCW operation, (2) assess 14 test speeds for CIB (5 for LVS, 5 for LVM, and potentially 4 for LVD), and (3) assess 6 tests speeds for DBS (2 for LVS, 2 for LVM, and potentially 2 for LVD), would result in a total of 20 unique combinations of test conditions and test speeds to be evaluated for AEB. If the Agency uses check marks to give credit to vehicles that (1) are equipped with the recommended ADAS technologies, and (2) pass the applicable system performance test requirements for each ADAS technology included in NCAP until such time as a new ADAS rating system is developed and a final rule to amend the safety rating section of the Monroney label is published, what is an appropriate minimum pass rate for AEB performance evaluation? For example, a vehicle is considered to meet the AEB performance if it passes two-thirds of the 20 unique combinations of test conditions and test speeds (*i.e.,* passes 14 unique combinations of test conditions and test speeds).

(43) As fused camera-radar forward-looking sensors are becoming more

prevalent in the vehicle fleet, and the Agency has not observed any instances of false positive test failures during any of its CIB or DBS testing, is it appropriate to remove the false positive STP assessments from NCAP's AEB (*i.e.,* CIB and DBS) evaluation matrix in this NCAP update? Why or why not?

(44) For vehicles with regenerative braking that have setting options, the Agency is proposing to choose the ''off'' setting, or the setting that provides the lowest deceleration when the accelerator is fully released. As mentioned, this proposal also applies to the Agency's PAEB tests. Are the proposed settings appropriate? Why or why not? Will regenerative braking introduce additional complications for the Agency's AEB and PAEB testing, and how could the Agency best address them?

(45) Should NCAP adopt any additional AEB tests or alter its current tests to address the ''changing'' rear-end crash problem? If so, what tests should be added, or how should current tests be modified?

(46) Are there any aspects of NCAP's current FCW, CIB, and/or DBS test procedure(s) that need further refinement or clarification? If so, what refinements or clarifications are necessary, and why?

3. FCW and AEB Comments Received in Response to 2015 RFC Notice

NHTSA received several comments in response to the December 2015 notice pertaining to NCAP's DBS and CIB tests. These included comments on FCW effective time-to-collision (TTC), false positive test scenarios, procedure clarifications, expanding testing, and the AEB strikeable target. These will be discussed over the next few sub-sections.

a. Forward Collision Warning (FCW) Effective Time-To-Collision (TTC)

In its response to NCAP's December 2015 notice, BMW suggested that the Agency adopt an ''effective TTC'' for NCAP's FCW test that differs from the ''absolute TTC'' currently stipulated in the associated test procedure. The manufacturer contended that the deceleration due to an activated AEB system effectively prolongs the reaction time for the driver such that ''an FCW warning with AEB intervention at an absolute TTC of 2.0 seconds is assumed to show an equal or greater effectiveness in comparison to an FCW warning at 2.4 seconds without AEB intervention.'' BMW suggested that if AEB functionality is intrinsic to the frontal crash prevention system, the assessment of the warning TTC in the FCW performance test should consider the time gained by AEB deceleration and therefore the Agency should assess the ''effective TTC,'' not an ''absolute TTC.''

The Agency agrees with BMW that FCW and AEB are interrelated and is thus proposing to assess the presence of an FCW alert as an integral component of the CIB test. To assess the adequacy of the FCW alert in that context, the Agency has proposed to evaluate the presence of a vehicle's FCW system during its CIB tests by requiring the SV accelerator pedal be fully released within 500 ms after the FCW alert is issued. If no FCW alert is issued during a CIB test, the SV accelerator pedal will be fully released within 500 ms after the onset of CIB system braking. If no FCW alert is issued and the vehicle's CIB system does not offer any braking, release of the SV accelerator pedal will not be required prior to impact with the POV. The Agency believes that this proposal is philosophically aligned with BMW's request, as it would no longer require the direct assessment of FCW timing relative to an ''absolute TTC.'' Rather, FCW timing, and how it relates to the intended onset of CIB activation, would be at the discretion of the vehicle manufacturer (who will have explicit knowledge of how the operation of their vehicles' CIB systems affect the ''effective TTC''). That said, the Agency continues to believe that well-designed FCW alerts can provide significant safety benefits in crash-imminent rear-end crash scenarios, and encourages vehicle manufactures to present them such that the driver may be able to respond with sufficient time to avoid a crash (*i.e.,* not to solely rely on CIB activation for crash avoidance). If a vehicle manufacturer chooses to issue an FCW alert in a way that assumes a CIB intervention will effectively extend the precrash timeline, but then the AEB system does not activate under real-world driving conditions, or activates late, drivers may not have enough time to react to avoid an impending crash.

b. False Positive Test Scenarios

Citing the potential for redundancy with the three active/supplemental braking scenarios for systems exhibiting lower deceleration rates, Mobileye suggested that the Agency impose a maximum speed reduction of 2 kph (1.24 mph) for the CIB and DBS tests, or a maximum duration of braking over the maximum allowable deceleration threshold for the false positive tests. The STP test is designed to provide an indication as to whether a vehicle's AEB system may have a false activation problem. Some vehicles use haptic braking and/or low-level braking as part of their FCW alert strategy. These brake activations are not intended to slow the vehicle significantly; rather, they attempt to get the driver's attention so that he/she will respond to the crash-imminent situation. That said, it is quite possible that FCW-based braking could reduce speed more than the 2 kph (1.24 mph) threshold suggested by Mobileye.

Recognizing the potential problem for a vehicle to fail the CIB false positive test as a consequence of how its FCW system was designed to work, NHTSA built some flexibility into the assessment criteria used to evaluate how the subject vehicle (SV) responds to the STP. In the CIB test, activations can produce peak decelerations of up to 0.5g, which was beyond any FCW-based level at the time. In the DBS test, the peak deceleration of a given test trial must not exceed 150 percent of the average peak deceleration calculated for the baseline test series performed at the same nominal SV speed. These provisions are intended to tolerate small levels of deceleration, but not the larger magnitudes indicative of an AEB intervention.

BMW objected to the inclusion of the false positive test scenario in general for both DBS and CIB systems and raised concerns that such tests ''can incentivize vehicle manufacturers to focus on one artificial situation, instead of considering the myriad of potential real-world traffic situations.'' The manufacturer suggested that if this test scenario remains for DBS, then the Agency should allow manufacturers to specify a brake pedal application rate limit beyond 279 mm/s (11 in./s) and up to 400 mm/s (16 in./s) for the false positive test scenario, to harmonize with Euro NCAP requirements. BMW further stated that limiting the rate to 279 mm/s (11 in./s) could increase a DBS system's sensitivity, and thereby increase the likelihood of additional false activation events in the real world. The manufacturer mentioned that as more frontal crash prevention systems combine both FCW and AEB functionalities, speed should reduce for all pedal application speeds.

Regarding BMW's objection to continuing with the false positive test scenario for CIB and DBS in NCAP, NHTSA notes that it has requested comment on whether eliminating the false positive tests would be appropriate at this time. As discussed previously, the Agency has not observed false positive test failures in CIB or DBS testing since these ADAS technologies were added to NCAP.

If NHTSA decides it is appropriate to keep the false positive test scenario for DBS, BMW requested that

manufacturers should be permitted to specify a brake pedal application rate up to 400 mm/s (16 in./s) since this is the upper brake application rate limit established by Euro NCAP. In its November 2015 final decision notice for AEB, NHTSA addressed a similar request from the Alliance, which suggested that the Agency harmonize with Euro NCAP's brake application rate range of 200 to 400 mm/s (8 to 16 in./s).[190] At the time, the Agency stated that it would retain its proposed brake application rate of 254 ± 25.4 mm/s (10 ± 1 in./s) in the DBS system performance test. In justifying this decision, NHTSA contended that the current application rate value is well within the range of the Euro NCAP specification. Also, NHTSA reasoned that the current application rate appears to be a feasible representation of the activation of DBS systems. DBS systems are designed to stop rather than slow down, but not too fast like conventional brake assist systems, which typically address emergency panic stop situations where the brake application rate exceeds 360 mm/s (14.2 in./s). For NHTSA to focus on evaluating system performance for DBS technology (not conventional brake technology), the Agency plans to retain the current brake pedal application rate of 254 ± 25.4 mm/s (10 ± 1 in./s) for the DBS test.

c. Procedure Clarifications

In response to the November 2015 final decision notice, Mobileye asked NHTSA to clarify the process of releasing the accelerator pedal within 500 ms of the FCW alert prior to braking. The commenter questioned whether the throttle was gradually released over 500 ms, or abruptly released over 50 ms. Mobileye also asked that the Agency clarify how braking is affected if there is no FCW alert, or if the FCW alert occurs very close to the brake activation.

NHTSA notes that the throttle pedal release rate is not restricted in NCAP's CIB test procedure. The test procedure requires only that the SV throttle be fully released within 500 ms after the FCW alert is issued. As previously mentioned, as part of the Agency's proposed changes to the CIB tests, it also intends to include test procedure language stating that if no FCW alert is issued during a CIB test, the SV accelerator pedal will be released within 500 ms after the onset of CIB system braking, and that if no FCW alert is issued and the vehicle's CIB system does not offer any braking, release of the SV accelerator pedal will not be required prior to impact with the POV.

With respect to how SV braking is affected, if there is no FCW alert, or if the alert happens very close to brake activation, different steps are taken for the crash imminent braking (CIB) and dynamic brake support (DBS) tests.

In the existing DBS tests, the test procedure states that the accelerator pedal must be released within 500 ms after the FCW alert is issued, but prior to the onset of the manual SV brake application by a robotic brake controller. The Agency recognizes that this can create an issue if no FCW alert occurs because the throttle may still be depressed (since no warning was issued) while the SV brakes are applied by the robot at the prescribed TTC. The Agency has documented this possibility where the SV throttle and brake pedals are applied at the same time and provided a recommendation that up to a 250 ms overlap be allowed.[191] In other words, once the SV driver detects that the robot has applied the brakes, the driver will have 250 ms to release the accelerator fully. The test would not be valid unless this criterion is met.

Although the Agency has proposed to revise when the manual (robotic) brake application is initiated to a time that corresponds to 1.0 second after the FCW alert is issued (regardless of whether a CIB activation occurs after the FCW alert but before initiation of the manual brake application) if it continues to perform DBS testing in NCAP, it has also requested comment on appropriate TTCs for the modified DBS test conditions as an alternative to this proposal. Therefore, NHTSA is also requesting comment on the following:

(47) Would a 250 ms overlap of SV throttle and brake pedal application be acceptable in instances where no FCW alert has been issued by the prescribed TTC in a DBS test, or where the FCW alert occurs very close to the brake activation. If a 250 ms overlap is not acceptable, what overlap would be acceptable?

d. Expand Testing

Magna suggested that NHTSA expand testing to encompass low light and inclement weather situations. The Agency's proposal for PAEB systems includes testing under less-than-ideal environmental conditions (specifically at nighttime). The Agency notes that approximately half (51 percent) of fatalities caused by rear-end crashes and most MAIS 1–5 injuries (80 percent) occurred under daylight conditions. Furthermore, nearly all fatalities (92 percent) and injuries (88 percent) stemming from rear-end collisions occurred in clear weather.[192] Having said that, IIHS's review of 2009–2016 rear-end crash data suggested that AEB-equipped vehicles are over-represented for crashes occurring in certain weather conditions, such as snow and ice.[193] Therefore, NHTSA is requesting comment on the following:

(48) Should the Agency pursue research in the future to assess AEB system performance under less than ideal environmental conditions? If so, what environmental conditions would be appropriate?

e. AEB Strikeable Target

Numerous commenters recommended that NHTSA harmonize its Strikeable Surrogate Vehicle (SSV) with the test target used by other testing organizations such as IIHS and Euro NCAP. The commenters reasoned that harmonization would further advance the implementation of AEB technology by reducing the development and testing burden and thereby result in lower-cost systems. Mercedes recommended that NHTSA recognize other targets as being equivalent devices to the SSV and requested that NHTSA allow vehicle manufacturers the option to choose which target is used for testing.

Currently, NHTSA uses the SSV as the principal other vehicle (POV) in NCAP testing of DBS and CIB systems. The SSV is a target vehicle modeled after a small hatchback car and fabricated from light-weight composite materials including carbon fiber and Kevlar®.[194] Using this target imposes certain limitations, most importantly the maximum speed it can be operated at, or be struck by, the SV. Due to its material properties, the SSV can inflict damage to vehicles that impact it at higher speeds.

Another target, the Global Vehicle Target (GVT), which was referenced earlier with respect to BSI (blind spot intervention) testing, resembles a white hatchback passenger car. This three-

[190] 80 FR 68608 (Nov. 5, 2015).

[191] Forkenbrock, G.J., & Snyder, A.S. (2015, June), *NHTSA's 2014 automatic emergency braking test track evaluations* (Report No. DOT HS 812 166), Washington, DC: National Highway Traffic Safety Administration.

[192] Swanson, E., Foderaro, F., Yanagisawa, M., Najm, W.G., & Azeredo, P. (2019, August), *Statistics of light-vehicle pre-crash scenarios based on 2011–2015 national crash data* (Report No. DOT HS 812 745), Washington, DC: National Highway Traffic Safety Administration.

[193] Cicchino, J.B. & Zuby, D.S. (2019, August), Characteristics of rear-end crashes involving passenger vehicles with automatic emergency braking, *Traffic Injury Prevention.* 2019, VOL. 20, NO. S1, S112–S118, *https://doi.org/10.1080/15389588.2019.1576172.*

[194] 80 FR 68604 (Nov. 5, 2015).

dimensional surrogate is currently used by other consumer organizations, including Euro NCAP. It is also used by many vehicle manufacturers in their internal testing to NCAP test specifications, and by NHTSA to facilitate ADAS research using pre-crash scenarios beyond those included in the Agency's FCW, CIB, and DBS test procedures.[195]

The GVT consists of 39 vinyl-covered foam pieces (held together with hook and loop fasteners) that form the structure the outer skins are attached to. It is secured to the top of a Low-Profile Robotic Vehicle (LPRV) using hook and loop fasteners, which separate upon an SV-to-GVT collision. When the GVT is hit at low speed, it is typically pushed off the LPRV but remains assembled. At higher impact speeds, the GVT breaks apart as the SV essentially drives through it, and can then be reassembled on top of the LPRV.

The use of this surrogate vehicle would allow the Agency to perform tests at higher speeds, thus increasing safety benefits. For this reason, the Agency used the GVT in its characterization study for CIB testing at higher speeds. The SSV initially limited the test speeds the Agency could adopt for CIB and DBS testing because of concerns over potential damage to the testing equipment and test vehicle. Using the GVT significantly reduces that possibility for the test speeds proposed. Also, as future upgrades for NCAP are planned, the GVT can be used to evaluate more challenging crash scenarios, such as those required for other ADAS technologies (Intersection Safety Assist and Opposing Traffic Safety Assist). NHTSA has recently docketed draft research test procedures for these technologies.[196] [197] If, in the future, the Agency was to consider adopting other test procedures requiring a strikeable target, incorporating the GVT would allow harmonization across the program.

NHTSA has conducted vehicle testing to evaluate the FCW alert and CIB intervention onset timing observed using the GVT Revision E and compared that with the timing recorded for identical tests performed with NHTSA's SSV benchmark.[198] Three light vehicles and three rear-end crash scenarios were used for this evaluation. A secondary objective of this study was to assess the characteristics and durability of the GVT for various test track configurations, specifically its dynamic stability and in-the-field reconstruction time after being struck by a test vehicle. GVT stability was evaluated using straight line and curved path maneuvers at various speeds and lateral accelerations. Reconstruction times of the GVT after impact were examined using different impact speeds, directions of impact, and assembly crew sizes.

Overall, the results from the study suggested that the onset timing of FCW and CIB systems observed during rear-end tests performed with the GVT was similar to that recorded for the SSV.[199] The GVT was also found to be physically stable and remained affixed to the robotic platform used to facilitate its movement during the high-speed longitudinal tests as well as those performed at the limit of the platform's lateral road holding capacity. Although the time between test trials was longer than that associated with use of the SSV, GVT reassembly tests demonstrated that the GVT could be reconstructed in a reasonable time between tests after being struck. However, the physical reconstruction time is one of three considerations when determining the time between tests when the GVT is used. After being reassembled and secured to the top of the robotic platform, the platform must re-establish its communication with the other equipment needed to perform the tests, and a ''zero-offset'' check is used. This check not only ensures the GVT orientation relative to the platform remains consistent for all tests, but also confirms the distance from the SV to the GVT at the point of impact is accurately reported as zero when the two first make contact.

NHTSA proposes to use the GVT in lieu of the SSV in future NCAP testing. Similar to that noted earlier regarding the use of the articulated pedestrian mannequins, the use of the GVT provides another opportunity for NHTSA to harmonize with other consumer information safety rating programs as mandated by the Bipartisan Infrastructure Law. Comments are sought on its adoption regardless of whether modifications are made to test speeds, deceleration, test scenarios, combining test procedures, et cetera, as has been discussed.

The Agency also recognizes that there have been ongoing revisions to the GVT to address its performance in other crash modes that exercise different ADAS applications. At this time, NHTSA believes the latest Revision G is appropriate for testing in NCAP. However, for the purpose of AEB testing only, NHTSA is proposing to accept manufacturer verification data for AEB tests conducted using GVT Revision F.[200] [201] It is the Agency's understanding that Revision G incorporates changes to the front, side, and oblique aspects of Revision F.[202] NHTSA believes that modifications implemented for Revision G have not altered the physical characteristics of the rear of the target such that a vehicle's performance in the rear-end crash mode would be impacted. The Agency requests comment on:

(49) The use of the GVT in lieu of the SSV in future AEB NCAP testing,

(50) whether Revisions F and G should be considered equivalent for AEB testing, and

(51) whether NHTSA should adopt a revision of the GVT other than Revision G for use in AEB testing in NCAP.

[195] Currently, manufacturers use test results from their internal testing and submit them to NHTSA for NCAP's recommendation of vehicles that pass its performance testing requirements.

[196] National Highway Traffic Safety Administration (2019, September), Intersection safety assist system confirmation test: Working draft, *http://www.regulations.gov,* Docket No. NHTSA–2019–0102–0006.

[197] National Highway Traffic Safety Administration (2019, September), Opposing traffic safety assist system confirmation test: Working draft. *http://www.regulations.gov,* Docket No. NHTSA–2019–0102–0008.

[198] Snyder, A.C., Forkenbrock, G.J., Davis, I.J., O'Harra, B.C., & Schnelle, S.C. (2019, July), *A test track comparison of the global vehicle target and NHTSA's strikeable surrogate vehicle* (Report No. DOT HS 812 698), Washington, DC: National Highway Traffic Safety Administration.

[199] Comparable observations were made upon review of test data from the Agency's CIB characterization testing. Upon review of test data from the Agency's CIB characterization testing, FCW and CIB onset timings for identical vehicles were highly comparable regardless of whether the SSV or GVT Revision G targets were used.

[200] While the Agency used GVT Revision E in its comparative testing with the SSV, and it believes that no significant differences exist between Revision E and Revision F that would affect AEB test results, the Agency does not believe it is necessary to accept from vehicle manufacturers AEB test data that was derived using Revision E because Revision E is no longer in production. Therefore, the Agency believes that any OEM data that is submitted should reflect the use of GVT Revision F or Revision G.

[201] Although the Agency used GVT Revision E in its comparative testing with the SSV, the Agency does not believe that modifications made for Revision F would have changed the results of that testing. It is the Agency's understanding that several modifications were made to the rear of Revision E, which included adding additional radar material to the bottom skirt of the target to attenuate internal reflections, and reducing the slope of the rear top portion of the hatchback to increase the power of the radar return.

[202] To improve the real-world characteristics from the front and side of the target, several changes to the radar treatment were integrated into the components of the GVT body for Revision G compared to Revision F, including changes to the skin and wheel treatment. There were also some minor shape changes to the front of the GVT body to improve front radar return and to the side to improve the ability to hold its shape. *http://www.dynres.com/2020/02/25/the-new-global-vehicle-target-gvt-has-arrived/.*

With respect to Mercedes' request that NHTSA consider several targets and allow manufacturers the option to choose which target is used for testing, the Agency does not believe such an approach is feasible. The Agency currently accepts and uses, for recommendation purposes on *www.NHTSA.gov,* data submitted by vehicle manufacturers for internal CIB and DBS testing that was conducted using a target other than the SSV, such as the Allgemeiner Deutscher Automobil-Club e.V (ADAC) target, which was previously used by Euro NCAP and IIHS.[203] However, during its system performance verification testing, the Agency has observed several test failures, which may be attributed to differences in target designs.

In NHTSA's November 2015 AEB final decision notice,[204] NHTSA stated that manufacturers do not need to use the SSV to generate and submit self-reported test data in support of their AEB systems that pass NCAP's system performance requirements and are recommended to consumers on the Agency's website. However, if the vehicle does not pass NCAP's system performance criteria for AEB systems during the program's random system performance verification testing, the Agency would remove the recommendation from its website. To uphold the credibility of the program and reasonably assure that consumers are receiving vehicles that meet a specified minimum performance threshold, NHTSA believes that it is critical to accept self-reported data from manufacturers that was obtained using tests conducted in accordance with NHTSA test procedures. As such, NHTSA is proposing not to accept vehicle manufacturer test data that was derived from an alternative test target other than that which is specified in NCAP's test procedures.

IV. ADAS Rating System

NHTSA is planning to create a rating system based on assessments related to the performance of ADAS technologies, including, but not necessarily limited to, the technologies already part of the program and others proposed above. Currently, NCAP places a check mark by the relevant ADAS technology on NHTSA's website, *www.nhtsa.gov,* if two conditions are met: (1) A vehicle is equipped with the safety technology recommended by NHTSA; and (2) the system meets NCAP's performance specifications. Consumers are encouraged to look for vehicles equipped with ADAS that meet NCAP's performance tests, which are intended to establish a minimum level of performance on which consumers can rely and compare among vehicles equipped with similar technologies.

In the Agency's December 2015 notice, NHTSA discussed a series of point values for the ADAS technologies at that time. These points would have been used in a star rating system for these technologies. Vehicles with ADAS that met the criteria set forth in the Agency's test procedures would earn full points if offered as standard equipment on a particular model and half points if offered only as optional equipment for that model. In response to that proposal, commenters provided mixed support regarding the feasibility and appropriateness of developing such an ADAS rating system versus the current process of just identifying the presence of recommended technologies with check marks.[205] Proponents of a rating system were generally supportive of the broad concept of rating ADAS, but did not propose specific suggestions for how the Agency could develop such a rating system. Some commenters responded that ADAS technologies have not yet matured to the point that a rating system would be appropriate, while others believed that one could be developed. In the responses for the October 1, 2018 public meeting, support still varied, even when the discussion was more focused on how the FAST Act mandate to provide crash avoidance information on the Monroney label might be fulfilled in the context of an ADAS rating system.

A. Communicating ADAS Ratings to Consumers

As mentioned previously, NHTSA's current method of providing ADAS information to consumers conveys which systems meet NCAP's system performance requirements, but provides no overall ADAS technology rating for the vehicle. However, as more emerging ADAS technologies are available in the market, the Agency believes that a rating mechanism for these systems would be more beneficial for consumers because it could better distinguish the technologies, including different levels of system performance and the technologies' life-saving potential, rather than simply listing how many technologies a given vehicle is equipped with that meet NCAP's system performance requirements. As will be discussed in the sections that follow, ADAS ratings could be communicated to consumers using stars, medals, points, or other means, thereby allowing them to make better-informed decisions. Also, the ratings could be based on the safety benefit potential afforded by vehicles' ADAS technologies and system performance. In addition, NHTSA plans to explore several approaches on how to present such rating information in the Agency's planned consumer research. In this RFC, NHTSA is soliciting input solely on the creation of an ADAS rating system, not the visual representation or placement of that rating system at points of sale. As described in greater detail below, issues related to the visual representation and placement of the rating system at points of sale will be a topic covered in future notices and research.

1. Star Rating System

NCAP currently uses 1 to 5 stars to communicate vehicle crashworthiness ratings to consumers, with both ratings for the individual tests and an overall rating. Given the familiarity that consumers have with NHTSA's current 5-star ratings system, the Agency could also consider the use of stars for a future ADAS rating system. However, the Agency has some reservations about pursuing such an approach.

A future star-based ADAS rating system could produce lower ratings for technologies than consumers are accustomed to seeing in crashworthiness and rollover resistance tests, and may cause unnecessary consumer confusion about the additional safety the technology on their vehicle provides. For instance, although NHTSA believes ADAS could potentially add significant safety benefits in addition to the crashworthiness protection afforded on vehicles, the Agency questions whether consumers would interpret 1- and 2-star ADAS ratings as conveying added benefits beyond the crashworthiness protection offered by a vehicle. In addition, vehicles that do not have any ADAS ratings could mistakenly be interpreted to have an advantage (*i.e.,* additional safety benefits) over those that have low ADAS star ratings. Thus, vehicles that have low ADAS star ratings could inadvertently discourage consumers from considering ADAS in their purchasing decisions, when in fact, those vehicles with 1- and 2-stars may offer significant safety benefits over their unrated peers.

Given these concerns, the Agency could consider reserving star ratings to convey crashworthiness results only and distinguish ADAS ratings by using another visualization approach, such as a medals system or points-based system.

[203] 80 FR 68604 (Nov. 5, 2015).

[204] 80 FR 68607 (Nov. 5, 2015).

[205] *https://www.regulations.gov,* Docket No. NHTSA–2015–0119.

2. Medals Rating System

Another potential method of presenting ADAS rating information to consumers could be a three-tiered award system similar in concept to Olympic medals. Presumably, most consumers are already familiar with the designations of bronze, silver, and gold as increasingly more prestigious levels of achievement.

Using an awards system (*e.g.,* medals) rather than stars to represent NCAP's rating of ADAS technologies would not only distinguish ADAS grades from crashworthiness ratings, but also visually communicate that the two ratings are conveying different types of vehicle safety information. However, it could cause consumer confusion by having two separate rating systems that consumers would need to consider and, to the extent there is a divergence between the two systems, potentially weigh against one another for a given vehicle.

3. Points-Based Rating System

NHTSA could use points to convey ADAS rating information. Points could be used in lieu of stars or medals or in addition to these alternative rating communication concepts, and they may serve as the basis for any of the potential rating system approaches discussed in the sections that follow. One advantage of a points-based system is that it can provide improved delineation in ratings, thus benefiting consumers who may want to compare ratings between several vehicle models. However, the inherent granularity of a points-based system may cause consumer confusion if conveyed in addition to another, coarser, communication rating concept, such as stars or medals. As mentioned previously, NHTSA plans to conduct consumer research surrounding the concept of an overall NCAP rating that would combine results from crashworthiness, rollover resistance, and ADAS technology testing.

4. Incorporating Baseline Risk

Another consideration for the Agency that may add value to an ADAS rating system is the notion of conveying a vehicle's performance relative to the baseline (or average) performance observed for today's vehicle fleet. As detailed later in this notice, this concept is currently an element of NCAP's crashworthiness rating system. Star ratings generated in NCAP today are a measure of how much more (or less) occupant protection (in terms of injury risk) a given vehicle affords when compared to an ''average'' vehicle. The Agency could consider incorporating the baseline concept when developing an ADAS rating system as well. For instance, today's ''average'' vehicle may achieve 60 out of a possible 100 points (or 3 out of 5 stars) during NCAP's testing. This score (or rating) may translate to a 30 percent reduction in the risk of crashes, injuries, deaths, etc. Scores (or ratings) for future vehicles, which could also potentially be tied to a percent reduction in crashes, could be compared relative to the baseline rating of today's fleet, thus affording consumers the opportunity to compare scores (or ratings) for vehicles spanning different model years.

B. ADAS Rating System Concepts

Just as there are several ways to communicate ADAS ratings to consumers, there are also several ways to rate ADAS technologies, a few of which are discussed below. As each of these rating system concepts center around vehicle performance in NCAP tests, it was necessary to consider the primary components of these tests during concept development.

1. ADAS Test Procedure Structure and Nomenclature

As discussed extensively in this notice, each ADAS technology and associated test procedure the Agency is considering for inclusion in NCAP has the potential to address a real-world safety problem. Each test procedure is designed to replicate certain injurious and fatal real-world events (termed ''scenarios'' in this new rating concept) that can be approximated in a laboratory setting to assess the capabilities of a given ADAS. Within each scenario, the Agency defines test conditions to replicate types of real-world incidents. Within each test condition, one or more test variants (as illustrated in Figures 1 and 2 below) that assess the limitations of each ADAS technology under that test condition is also defined.[206] Finally, for each test variant, the technology would have to pass a certain number of trials to receive credit for that part of the ADAS rating. Figure 1 illustrates a generic structure for describing a given ADAS test procedure and its nomenclature in NCAP.

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[206] In certain test conditions that do not have a multitude of assessments (*e.g.,* test condition variants), the test condition and assessment would be one and the same.

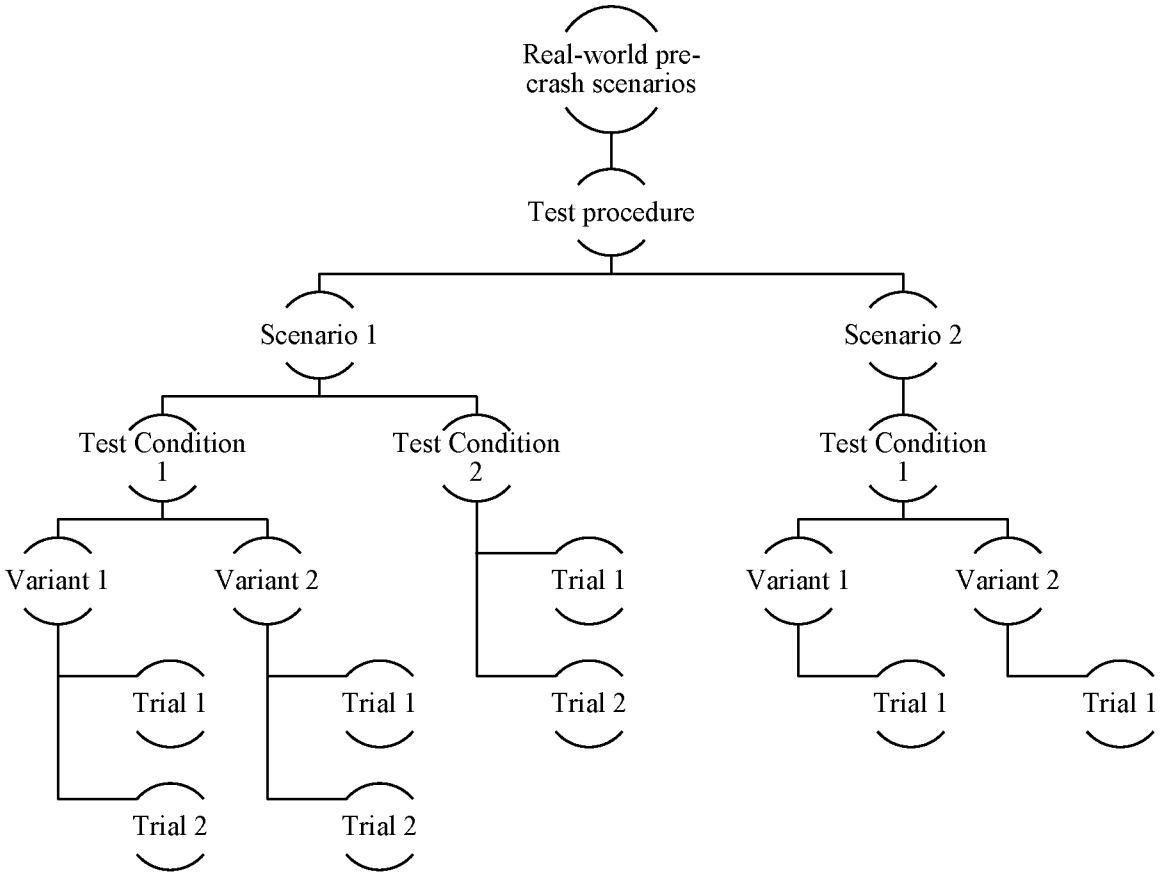

Figure 1: Generic ADAS test procedure nomenclature

The above methodology and diagram can be illustrated further using one of the ADAS technologies discussed in this document, PAEB. PAEB is intended to address a real-world safety issue involving vulnerable road users, like pedestrians. The current test procedure is designed to replicate S1 and S4 scenarios (vehicle heading straight with a pedestrian crossing the road, and a vehicle heading straight with a pedestrian walking along or against traffic, respectively). Within each scenario, one or more test conditions are defined. For example, within the S1b test scenario (as previously discussed), several test condition variants are defined. In this case, the same test condition would have to be executed at various speeds (test condition variants). Finally, NHTSA would prescribe the number of trials for which the system would have to exhibit conformance to receive credit for these particular test condition variants and, in turn, scenario. Figure 2 illustrates this example.

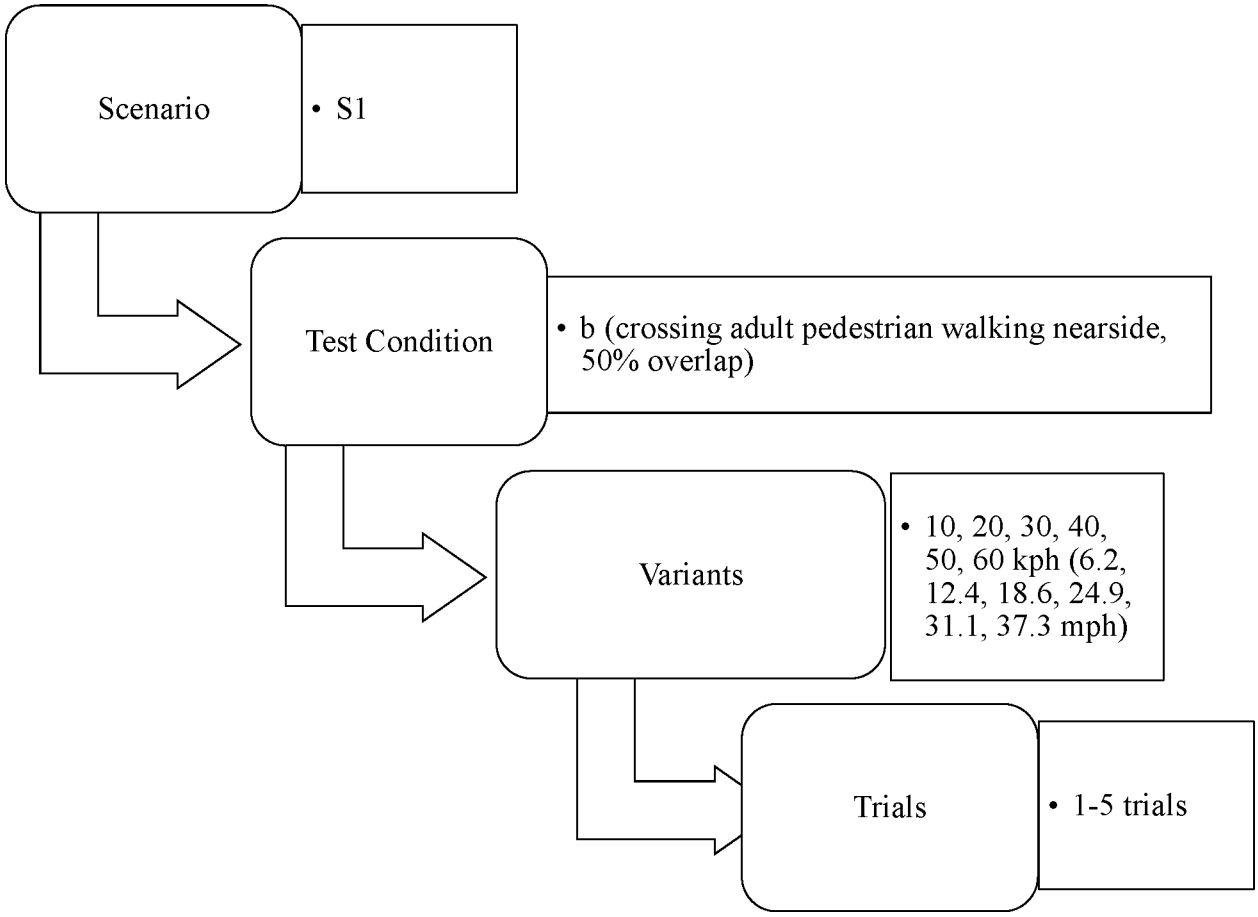

Figure 2: Scenario Sb1 of the proposed NCAP PAEB test procedure

To illustrate further the multitude of assessments simplified in Figure 1, certain test scenarios only include one test condition and one test variant. A specific example of this would be the previously mentioned Lead Vehicle Stopped (LVS) scenario, evaluated as part of the Crash Imminent Braking (CIB) test procedure, where the Subject Vehicle (SV) encounters a stopped Principal Other Vehicle (POV) on a straight road moving at 40.2 kph (25 mph). This example is illustrated in Figure 3.

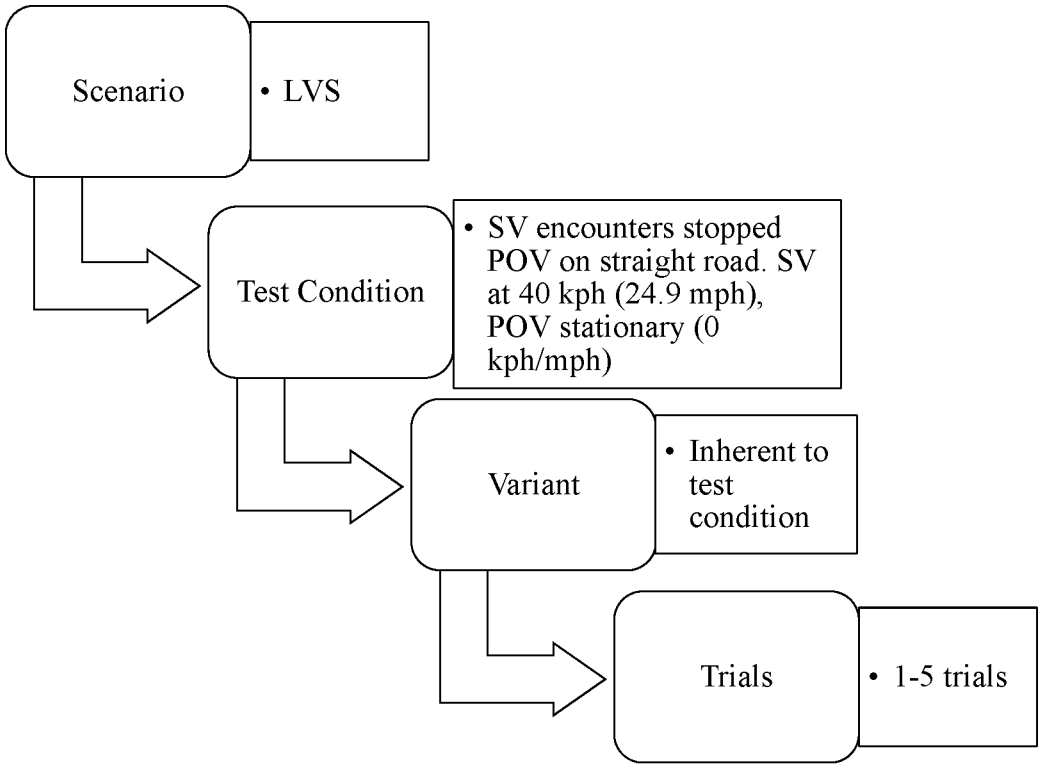

Figure 3: LVS Scenario of the NCAP CIB test procedure

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2. Percentage of Test Conditions To Meet—Concept 1

Given the test procedures' structure, an ADAS rating system could be designed with standards of increasing stringency that must be achieved to receive higher award levels (as shown in Table 7 below). In such a system, different ADAS technologies, each with a related test procedure (*e.g.,* FCW, CIB, LKS), are combined into categories where each technology addresses a similar crash problem. For instance, ADAS Category 1 in Table 7 could represent the Forward Collision Prevention category that would be comprised of the three forward collision prevention technologies, FCW, CIB, and DBS. Vehicles would have to meet increasing numbers of test conditions across all test procedures in that particular ADAS category (*i.e.,* three test procedures for the example given) to achieve higher ratings (*e.g.,* medals, stars, points). For the example rating system concept shown in Table 7, 50 percent of test conditions would have to be met to achieve a bronze award, 75 percent to achieve a silver award, and 100 percent to achieve a gold award for each ADAS category.[207] The lowest ADAS rating among the categories could serve as the overall ADAS award if a summary rating is established across all included ADAS technologies. Alternatively, an overall ADAS award could reflect the average ADAS rating amongst the technology categories.

TABLE 7—3-TIER ADAS RATING SYSTEM CONCEPT 1

	All test procedures & conditions in ADAS category			ADAS category award
	Bronze (50% of test conditions met)	Silver (75% of test conditions met)	Gold (100% of test conditions met)	
ADAS Category 1	Meets	Did not meet	Did not run	Bronze.
ADAS Category 2	Meets	Meets	Meets	Gold.
ADAS Category 3	Meets	Did not meet	Did not run	Bronze.
ADAS Category 4	Meets	Meets	Did not meet	Silver.
Overall ADAS Award	Bronze			

3. Select Test Conditions To Meet—Concept 2

Table 8 demonstrates another possible NCAP ADAS rating system concept. As with Concept 1, ADAS technologies are grouped into categories that address similar crash problems. Instead of having to meet a percentage of all test conditions, NCAP could specifically require certain test conditions to be met for each of three award levels. These award levels could be based on the following increasingly challenging delineations:

[207] When 'Did not meet' is listed for an ADAS category, the vehicle failed to pass the requirements for the test condition/variant when tested. 'Did not run' may be used to signify that the vehicle is not equipped with the technology to pass the related test procedure(s), and as such, the tests were not conducted.

(1) Bronze (Basic performers)—test conditions that are achievable for current systems to meet;

(2) Silver (Advanced performers)—test conditions that are more difficult for current systems to meet but are more easily achievable than the current known system limitations; and

(3) Gold (Highest performers)—test conditions that approach the current limits of system testing feasibility, vehicle operations, and event extremes.

Depending on a given technology's test procedure, the number of test conditions, test condition variants, and trial passes necessary to meet the Agency's requirements could vary. Thus, the ADAS performance requirements necessary for reaching each subsequent award level could be based on meeting a single test condition variant or meeting a number of test conditions. To explain further in the context of Table 8, ADAS Group 1 could be the Lane Keeping Assistance (LKA) technology category, where technology 1 could be LDW, and technology 2 could be LKS. In this example, the vehicle's LDW system meets all applicable test conditions (bronze, silver, gold). However, its LKS system fails to meet the test conditions required for silver, but meets the test conditions to earn bronze. Therefore, the highest award this vehicle could achieve for the LKA category would be bronze, as it is the highest award achieved by both of the technologies (LDW and LKS) included in the LKA category. Similar to Concept 1, the lowest or average ADAS rating amongst the category groups could serve as the overall ADAS award if a summary rating is established across all included ADAS technologies.

TABLE 8—3-TIER ADAS RATING SYSTEM CONCEPT 2

	Bronze test conditions	Silver test conditions	Gold test conditions	ADAS group award			
ADAS Group 1	1	2	3	1	2	1	Bronze.
Tech 1	Meets	Meets		Meets	Meets	Meets	
Tech 2	Meets	Meets	Meets	Meets	Did not meet	Did not run	
ADAS Group 2	1	2	3	1	2	1	Gold.
Tech 1	Meets	Meets	Meets	Meets	Meets	Meets	
Tech 2	Meets			Meets	Meets	Meets	
ADAS Group 3	1	2	3	1	2	1	Bronze.
Tech 1	Meets	Meets	Meets	Did not meet	Did not run	Did not run	
ADAS Group 4	1	2	3	1	2	1	Silver.
Tech 1	Meets	Meets	Meets	Meets	Meets	Did not meet	
Overall ADAS Award.	Bronze						

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A more detailed example of this ADAS rating system concept, which uses some of the test conditions and test condition variants discussed in this document (distinguished by variables such as speed), is shown below in Table 9. In this example, check marks are used to indicate that the vehicle's ADAS technology has met the requirements for a given test procedure's conditions and test condition variants. An ''X'' symbol is used to indicate where vehicles did not meet the test condition and/or variants, either because the vehicle was not equipped with the technology and therefore could not be tested, or because the vehicle's technology was tested, but failed to meet the test procedure requirements. Units are in kph unless otherwise noted.

To further explain the three-tier rating system illustrated in Table 9 with context, ADAS Group 3 in the example utilizes Blind Spot Detection (BSD) to demonstrate multiple test conditions and test condition variants. BSW (categorized as Technology 1 for the BSD grouping) has five test condition variants, and BSI (categorized as Technology 2 for the BSD grouping) includes three test condition variants. In order for BSD to achieve a bronze award in this example, the BSW system must meet the three test condition variants included for this technology under the 'Bronze Test Conditions/Variants' heading. No BSI test conditions, or test condition variants, must be met. In order for BSD to achieve a silver award, BSW must meet two test conditions (comprised of five test condition variants) and BSI must meet two test conditions, both of which are included under the 'Silver Test Conditions/Variants' heading. If the vehicle was also able to meet the third test condition included in the BSI test procedure, 'SV Lane Change w/Closing Headway 72.4/80.5', which is included under the 'Gold Test Conditions/Variants' heading in Table 9, the vehicle would earn a gold award. In the Table 9 example, however, BSI does not meet one of the silver test conditions/variants ('SV Lane Change w/Constant Headway 72.4/72.4'). Consequently, in this example, BSD achieves the next lowest award—bronze.

Table 9: Example of 3-Tier ADAS Rating System Concept 2

ADAS Group	Bronze Test Conditions/Variants			Silver Test Conditions/Variants						Gold Test Conditions/Variants								ADAS Group Award
Forward Collision Prevention (ADAS Group 1)	1	2	3	1	2	3	4	5	6	1	2	3	4	5	6	7	8	**Bronze**
FCW	LVS	LVD	LVM															
	✓	✓	✓															
DBS	LVM 40.2/16.1	STP 40.2	STP 72.4	LVD	LVM 72.4/32.2					LVS								
	✓	✓	✓	✓	X					✓								
CIB	LVM 40.2/16.1	STP 40.2	STP 72.4	LVD	LVM 72.4/32.2					LVS								
	✓	✓	✓	✓	✓					X								
Lane Keeping Assistance (ADAS Group 2)	1	2	3	1	2	3	4	5	6	1	2	3	4	5	6	7	8	**Gold**
LDW	Solid White Left/Right	Dashed Yellow Left/Right	Botts' Dots Left/Right															
	✓	✓	✓															
LKS				Solid White Left/Right, 0.2 m/s	Dashed White Left/Right, 0.2 m/s	Solid White Left/Right, 0.3 m/s	Dashed White Left/Right, 0.3 m/s			Solid White Left/Right, 0.4 m/s	Dashed White Left/Right, 0.4 m/s	Solid White Left/Right, 0.5 m/s	Dashed White Left/Right, 0.5 m/s					
				✓	✓	✓	✓			✓	✓	✓	✓					
Blind Spot Detection (ADAS Group 3)	1	2	3	1	2	3	4	5	6	1	2	3	4	5	6	7	8	**Bronze**
BSW	Converge & Diverge Left/Right	Pass-by 72.4/80.5 Left/Right	Pass-by 72.4/88.5Left/Right	Pass-by 72.4/96.6 Left/Right	Pass-by 72.4/104.6 Left/Right													
	✓	✓	✓	✓	✓													
BSI				SV Lane Change w/ Constant Headway 72.4/72.4	SV Lane Change w/ Constant Headway False Positive					SV Lane Change w/ Closing Headway 72.4/80.5								
				X	✓					✓								

Forward Pedestrian Impact Avoidance (ADAS Group 4)	1	2	3	1	2	3	4	5	6	1	2	3	4	5	6	7	8	
PAEB	S1f, 40.2/4.8	S1g, 40.2/4.8		S1a, 16.1/4.8	S1b, 16.1/4.8	S1c, 16.1/4.8	S1d, 16.1/4.8	S4a, 16.1/0	S4b, 16.1/0	S1a, 40.2/4.8	S1b, 40.2/4.8	S1c, 40.2/4.8	S1d, 40.2/4.8	S1e, 40.2/8.0	S4a, 40.2/0	S4b, 40.2/0	S4c, 40.2/4.8	Silver
	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	X	✓	X	
Overall ADAS Award	Bronze																	

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The approach presented in Tables 8 and 9 would address the Agency's desire to introduce a dynamic ADAS rating system. As technologies become more mature, the Agency expects ADAS system performances will begin to exceed NCAP testing requirements, and as such, systems will have an easier time meeting the required test conditions across all test procedures. The Agency could begin providing information on higher performing systems by periodically increasing the stringency of requirements to achieve the highest NCAP ratings. Lower award levels could be reserved for test conditions that are easily achieved by ADAS in the current vehicle fleet. Higher award levels could be reserved for test conditions that current ADAS have difficulty achieving, or for new test scenarios (*e.g.,* PAEB S2 or S3), conditions (*e.g.,* using a motorcycle or cyclist as the POV), or variants (*e.g.,* increased SV/POV speeds, decreased headways, additional weather conditions, varying deceleration rates) that are added to the program over time. This approach is expected to continue to provide consumers information on vehicle safety designs that introduce truly exceptional ADAS performance compared to their peers. It should also incentivize vehicle manufacturers to improve their ADAS capabilities to meet consumers' expectations for system performance.

Along these lines, NHTSA could also introduce a slight deviation to rating system Concept 2. In this deviation, not only would vehicles have to meet the most demanding requirements across all ADAS test procedures to receive higher ratings, but also the Agency could set the performance target for the highest level rating (gold, 5 stars, maximum points, etc.) for those test conditions that are required for an ADAS technology that is just emerging in the marketplace, such as Intersection Safety Assist (ISA), mentioned later in this notice. In doing so, consumers could be assured that purchasing a vehicle that earns the highest award level would offer the most advanced ADAS capabilities available at that time.

4. Weighting Test Conditions Based on Real-World Data—Concept 3

The Agency believes it is important to develop an ADAS rating system that is not only flexible (*i.e.,* one that can adapt or change over time) to keep pace with advancements in technologies, but also effective in providing consumer information that encourages the proliferation of life-saving technology. As such, a third rating system concept that the Agency could consider would be one which weights the technology groups based on the target population data and effectiveness attributable to each technology to derive the overall ADAS award. In essence, the more critical, more lifesaving, and/or more advanced/effective technology systems would have more contribution (*i.e.,* be worth more) in the rating system. Furthermore, for a given technology group, the Agency could weight the test conditions that approximate more frequent or injurious real-world events so that they have more influence in the rating for that group. The selected evaluation method could be normalized in such a way that the results of each test condition within a scenario could be appropriately combined and concisely presented for consumer information or ratings purposes. Such an approach could also be incorporated for either Concept 1 or Concept 2, discussed above.

Utilizing real-world data to inform the structure of a future ADAS rating system is challenging for several reasons. For one, there is no single metric (such as target crash populations, fatalities, or injuries) that can be used to weight every technology appropriately in a rating system when both the related real-world safety problem and meaningful influence are considered. In an effort to correlate rating system weights directly with potential real-world safety benefits, too little weight may be assigned to technologies that have lower target populations (such as those for Blind Spot Detection) compared to technologies that have much higher target populations (such as those for Forward Collision Prevention). Thus, the Agency is concerned that it may be possible for manufacturers to offer one or two ADAS systems that perform well in the NCAP tests, if those technologies with higher target populations are apportioned significant weight in a rating system, while choosing not to include the other, lower-weighted technologies on their vehicles, or opting to include them even if the systems perform poorly. Therefore, the Agency believes that it is critical to find an acceptable balance between weights dictated solely by real-world data and those that ensure each component provides a meaningful contribution to the rating system. In essence, each technology should be apportioned within the rating system such that it provides a significant contribution while also reflecting the relative safety improvement that each technology may afford consumers.

Changes in target population data (based on real-world crashes) and improvements made to ADAS technologies over time pose additional challenges for the Agency in using real-word data and system effectiveness estimates to inform appropriate weights or proportions to assign to the individual test conditions or the corresponding test condition variants in an ADAS rating system.[208] As technology systems improve to meet NCAP test scenarios/conditions, system effectiveness estimates may increase. Furthermore, as mentioned earlier in this notice, the real-world crash data may change as technologies are designed to address certain crash scenarios, but not others. Ideally, the Agency would adjust rating system weights to keep pace with these changes, as this would align with NHTSA's goal of developing a flexible ADAS rating system that can respond appropriately to improvements or changes seen for the fleet. Unfortunately, real-world data for system performance advancements is not always readily available to support dynamic program upgrades, as the crash data, which takes time to reflect changes in the vehicle fleet accurately, lags system updates and deployments.

Having said that, the Agency sees merit in using available real-world data, specifically target populations, to determine which ADAS technologies should be considered for inclusion in the program. The additional time between technology development and NHTSA's ability to collect real-world data on target populations has proven in the past to be sufficient to ensure that the technology is mature prior to considering it in NCAP. As mentioned previously, the four ADAS technologies discussed in this proposal focus on the most frequently occurring and/or most severe crash types, which the Agency believes is a feasible and prudent approach to use when considering whether an ADAS technology should be incorporated into NCAP. NHTSA will continue to leverage all information and safety studies on ADAS technologies, such as those cited in this notice, to support the Agency's proposal. In addition, NHTSA plans to leverage all available data to assess real-world insights into advanced safety technology performance.

5. Overall Rating

As discussed herein, there are many considerations when developing a potential ADAS rating system. These include: (1) What type of system to

[208] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

adopt; (2) whether to use points, medals, or awards to convey ratings; and (3) whether to weight system components based on real-world data. Another consideration is whether to have an overall rating. Although the concepts discussed thus far have included an overall rating, NHTSA could also simply list individual ratings for the included ADAS technologies, but not adopt an overall rating. NHTSA believes that consumers may have preferences as to which specific ADAS technologies they would or would not want on their vehicles and may be interested only in how those individual technologies perform in the Agency's testing, not in how the vehicle systems perform overall. The Agency notes that the assignment of ratings for individual technologies could simply supplement the NCAP program's existing list approach, or individual technology ratings could be listed concurrently with an overall rating. Thus, the Agency requests comment on whether an overall rating system is necessary and, if so, whether it should replace or simply supplement the existing list approach.

With regard to a future ADAS rating system, the Agency seeks comments on the following:

(52) The components and development of a full-scale ADAS rating system,

(53) the aforementioned approaches as well as others deemed appropriate for the development of a future ADAS rating system in order to assist the Agency in developing future proposals,

(54) the appropriateness of using target populations and technology effectiveness estimates to determine weights or proportions to assign to individual test conditions, corresponding test combinations, or an overall ADAS award,

(55) the use of a baseline concept to convey ADAS scores/ratings,

(56) how best to translate points/ratings earned during ADAS testing conducted under NCAP to a reduction in crashes, injuries, deaths, etc., including which real-world data metric would be most appropriate,

(57) whether an overall rating system is necessary and, if so, whether it should replace or simply supplement the existing list approach, and

(58) effective communication of ADAS ratings, including the appropriateness of using a points-based ADAS rating system in lieu of, or in addition to, a star rating system.

In responding to these approaches, or in developing new approaches for consideration, NHTSA requests that commenters consider a potential ADAS rating system that would allow flexibilities for continuous improvements to the program and cross-model year comparisons. In this notice, the Agency is seeking feedback on the appropriateness of the test scenarios, test conditions, test condition variants, and number of trials within each test variant for the four proposed technologies (PAEB, LKS, BSW, and BSI) discussed in this RFC, in addition to the four technologies currently included in NCAP. After NHTSA reviews comments in response to this notice, particularly those in response to questions raised within each of the ADAS technology sections and the rating system concepts discussed herein, the Agency anticipates finalizing the related test procedures and would then develop the selected ADAS rating system based on the technologies, test scenarios, test conditions, etc. that have support for incorporation into the program. Until NHTSA issues (1) a final decision notice announcing the new ADAS rating system and (2) a final rule to amend the safety rating section of the vehicle window sticker (Monroney label), the Agency plans to continue assigning NCAP credit, using check marks on *www.nhtsa.gov,* to vehicles that (1) are equipped with its recommended ADAS technologies, and (2) pass the applicable system performance test requirements.

V. Revising the Monroney Label (Window Sticker)

The third part to this notice relates to the Fixing America's Surface Transportation (FAST) Act, which includes a section that requires NHTSA to promulgate a rule to ensure crash avoidance information is displayed along with crashworthiness information on window stickers (also known as Monroney labels) placed on motor vehicles by their manufacturers.[209] At the time of the FAST Act, NHTSA was already in the process of developing an RFC notice to present many proposed updates to NCAP, including the evaluation of several new ADAS and a corresponding update of the Monroney label.

NHTSA currently requires vehicle manufacturers to include safety rating information, obtained from NHTSA under its NCAP program, on the Monroney labels of all new light vehicles manufactured on or after September 1, 2007 (49 CFR part 575). This requirement was mandated by Section 10307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act; A Legacy for Users (SAFETEA–LU). The purpose of the law is to ensure that vehicle manufacturers provide consumers with relevant vehicle safety ratings information on all new light vehicles at the point of sale so that they can make informed purchasing decisions.

Although the safety rating information included on the Monroney label has provided consumers with valuable information at the point of sale, there are limitations with the current label for NCAP. For instance, currently the vehicle safety rating section of the Monroney label only includes vehicle performance information for the crashworthiness program in NCAP (known as the 5-star safety ratings), which is comprised of a full-frontal impact test, a side impact barrier test, a side impact pole test, a static measurement of the vehicle's stability factor, and a dynamic assessment of the vehicle's risk to rollover in a single-vehicle crash. The other consumer information program in NCAP, which is the ADAS technologies assessment, is not included in the current vehicle safety rating section of the Monroney label. This information is only available on *www.nhtsa.gov,* along with the 5-star safety ratings information.[210]

Thus, NHTSA plans to issue a notice of proposed rulemaking (NPRM) in 2023 to include ADAS performance information from NCAP in the vehicle safety rating section of the Monroney label, as mandated by the FAST Act. However, NHTSA seeks a flexible means to keep pace with the technological advancement and the frequent development of new ADAS technologies while also providing adequate public participation and transparency. NHTSA would like to develop a way to allow the Agency both to convey NCAP vehicle safety information in the safety rating section of the Monroney label and minimize the number of rulemaking actions needed each time the Agency incorporates a new technology in NCAP.

At this time, NHTSA believes it may be able to achieve these goals by adopting all or some combination of the following three main categories for the

[209] Section 24321 of the FAST Act, otherwise known as the ''Safety Through Informed Consumers Act of 2015.''

[210] 49 CFR part 575, Section 302, ''Vehicle labeling of safety rating information (compliance required for model year 2012 and later vehicles manufactured on or after January 31, 2012),'' specifies that the safety ratings information landscape should be at least 4.5 in. wide and 3.5 in. tall or cover at least 8 percent of the total area of the Monroney label—whichever is larger. Currently, any change that requires modification of the safety rating information presented on the Monroney label would require a notice and comment rulemaking action pursuant to the Administrative Procedure Act.

safety rating section of the Monroney label: (1) Crash protection information—which would be comprised of a rating (possibly one which maintains the Agency's 5-star ratings brand) that is tied to a vehicle's performance in NCAP crashworthiness and rollover testing; (2) safety technology information—which could be comprised of a rating (possibly one that uses the Agency's 5-star ratings brand, a three-tier medal award system, or points) that is tied to a vehicle's ability to avoid a crash based on its performance in ADAS testing conducted by NCAP; and (3) overall vehicle safety performance information—which could give recognition to vehicles that are top performers in both the crash protection and safety technology information categories for a given model year.

NHTSA believes that efforts to develop a label that incorporates these three main overarching categories—crash protection information, safety technology information, and overall vehicle safety performance information—should also strive to reduce the need to update the Monroney label by way of rulemaking when future changes are made to the NCAP program.

NHTSA intends to develop potential label changes by conducting consumer research. In the past, NCAP has benefitted from research on the illustration of NCAP vehicle safety information in the safety rating section of the Monroney label. NHTSA plans to conduct qualitative and quantitative consumer market research to: (1) Evaluate the overall appeal of the safety rating label concept mentioned above and identify specific likes and dislikes associated with each of the three main categories on the label; (2) measure the ease of comprehension for the safety rating label concept and understand which visual and text features are most effective at conveying vehicle safety information; (3) assess the distinctiveness of how the information is displayed and understand how best to make the vehicle safety information stand out on the Monroney label; and (4) identify additional areas of improvement related to the three potential main label categories relating to crash protection information, safety technology information, and overall vehicle performance information.[211] NHTSA plans to use the results of this research to determine how best to convey safety rating information to the public.

[211] NHTSA published a notice on April 28, 2020, seeking public comment on the information collection aspect of the consumer market research.

VI. Establishing a Roadmap for NCAP

The fourth part to this notice discusses, for the first time in NCAP, a roadmap that sets forth NHTSA's plans for upgrading NCAP over the next several years. As mentioned at the beginning of this notice, the Agency's efforts outlined herein include both NHTSA's near- and long-term strategies for upgrading NCAP.

Fulfillment of the roadmap will involve NHTSA's issuing planned proposed upgrades in phases as vehicle safety-related systems and technologies mature and data about their use and efficacy become known. The systems and technologies would include new vehicle-based crashworthiness and crash avoidance systems as well as systems-based improvements, such as occupant restraints and headlamp system performance upgrades. NHTSA would issue a final decision document following an RFC that responds to comments and provides appropriate lead time. This phased process allows stakeholders to provide data and views on proposed program updates, and allows NHTSA more flexibility to pursue program updates quicker.

Since 2015, NHTSA has worked to finalize its research on pedestrian crash protection (head, and upper and lower leg impact tests), advanced anthropomorphic test devices (crash test dummies) in frontal and side impact tests, a new frontal oblique crash test, and an updated rollover risk curve. NHTSA has included these initiatives in the mid-term component of the 10-year roadmap because the Agency reasonably believes they would meet the four prerequisites for inclusion in NCAP.[212] Initiatives in the mid-term component of the 10-year roadmap identify and prioritize safety opportunities and technologies that are practical and for which objective tests and criteria, and other consumer data exist.[213]

In addition to the items in the roadmap discussed below, NHTSA is taking an unprecedented step to consider expanding NCAP to include safety technologies that may have the potential to help drivers make safe driving choices, as discussed in the next section. This aspect of NCAP would focus on the relationship between technology and behavioral safety, and would provide comparative information on devices that can shift driver behavior that contribute to crashes (*e.g.,* speeding, and drowsy-, impaired- and distracted-driving). Initiatives on these technologies could be woven into both the first and second half (*i.e.,* long-term portion) of the 10-year roadmap, depending on whether the technologies and objective tests and criteria are sufficiently developed to meet NHTSA's four prerequisites for inclusion in NCAP. Initiatives in the long-term component of the roadmap include an identification of any safety opportunity or technology not included in the mid-term component for a variety of reasons, and those initiatives that would most benefit from stakeholder input and comments from the public. The Agency believes the plans outlined below would fulfill the requirements set forth in Section 24213 of the Bipartisan Infrastructure Law for the 10-year New Car Assessment Program roadmap once this RFC is finalized.

The Bipartisan Infrastructure Law requires that NHTSA establish a roadmap for the implementation of NCAP not later than one year after the law's enactment.[214] This roadmap must cover a term of ten years, consisting of a mid-term component and a long-term component.[215] This roadmap aligns with relevant Agency priorities, performance plans, agendas, and any other relevant NHTSA plans.[216]

Additionally, the contents of the roadmap must include a plan for any changes for NCAP, which includes descriptions of actions to be carried out and shall, as applicable, incorporate objective criteria for evaluating safety technologies and reasonable time periods for changes to NCAP that include new or updated tests.[217] NHTSA has long-established criteria for evaluating safety technologies for inclusion in NCAP, which is discussed in detail earlier in this notice and in several previous notices. NHTSA also uses the notice and comment period to ensure the time periods for changes to NCAP are reasonable, and the Agency expects this practice to continue. As part of the Agency's development of next steps for NCAP, NHTSA regularly evaluates other rating systems within the United States and abroad, including whether there are safety benefits of consistency with those other rating

[212] The four requisites are: (1) The technology addresses a safety need; (2) system designs exist that can mitigate the safety problem; (3) the technology provides the potential for safety benefits; and (4) a performance-based objective test procedure exists that can assess system performance.

[213] Public Law 117–58, Sec. 24213.

[214] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(b).

[215] *Id.*

[216] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(c)(2)(A).

[217] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(c)(1)(A).

systems.[218] There are other benefits for being consistent, but safety is NHTSA's, and thus, NCAP's, top priority.

Next, the roadmap shall include key milestones, including the anticipated start of an action, completion of an action, and effective date of an update.[219] While NHTSA can reasonably anticipate when the start of actions may occur in the mid-term portion of the roadmap, many technologies in the long-term portion of the roadmap will require additional research, test procedure development, product development and maturity, and a number of other factors that prevent the Agency from providing more detail on the anticipated start of an action. As such, NHTSA can only provide the estimated start date of 2025–2031. Completion of action is highly dependent upon the notice and comment process, and the effective date would be highly dependent on the completion of an action. Completion dates are dependent on the number and depth of the comments received in response to an RFC, along with the technical research necessary to resolve any challenging issues in the comments. Effective dates are dependent on completion dates. As such, NHTSA cannot reasonably anticipate those timelines in advance.

The Bipartisan Infrastructure Law also requires that the mid-term portion of the roadmap identify and prioritize safety opportunities and technologies that are practical and for which objective rating tests, evaluation criteria, and other consumer data exist.[220] In the mid-term portion of the roadmap, NHTSA has included only those technologies that are practical and that otherwise meet the requirements in the law. With respect to the long-term portion of the roadmap, NHTSA must identify and prioritize safety opportunities and technologies that exist or are in development.[221] NHTSA has met both of these requirements in the following sections, prioritizing safety opportunities and technologies that are practical and for which objective rating tests, evaluation criteria, and other consumer data exist in the mid-term portion, and identifying safety opportunities and technologies that exist or are in development in the long-term portion.

Any safety opportunity or technology not included in this roadmap was omitted because NHTSA is not considering inclusion in NCAP at this time.[222] In the next five years, addition of other technologies or opportunities to the roadmap would be subject to NHTSA's four prerequisites for inclusion in NCAP, the requirements of the Bipartisan Infrastructure Law for inclusion in any part of the roadmap, and the appropriateness of the technology or opportunity for a consumer information program.

Per Sec. 24213(c), NHTSA must request comment on the roadmap and review and incorporate these comments, as appropriate.[223] This RFC requests comments from the public on the roadmap. NHTSA considers the notice and comment process to be the primary form of stakeholder engagement, though the Agency reserves the right to conduct other forms of engagement to ensure that input received represents a diversity of technical background and viewpoints.[224] With regard to a roadmap, NHTSA requests feedback on the following:

(59) Identification of safety opportunities or technologies in development that could be included in future roadmaps,

(60) opportunities to benefit from collaboration or harmonization with other rating programs, and

(61) other issues to assist with long-term planning.

2021–2022 Timeframe

- As discussed in detail in this notice, NHTSA proposes to add four new ADAS technologies (LKS, BSD, BSI, and PAEB) in NCAP.
- In addition to improving the safety and protection of motor vehicle occupants, NHTSA continues its efforts and focus to improve the safety of pedestrians and vulnerable road users. NHTSA plans to propose a crashworthiness pedestrian protection testing program in NCAP in 2022. The pedestrian protection program would incorporate three crashworthiness tests (*i.e.,* head-to-hood, upper leg-to-hood leading edge, and lower leg-to-bumper) discussed in the December 2015 RFC.[225] A crashworthiness pedestrian protection testing program would measure how well passenger cars, trucks, and sport utility vehicles protect pedestrians in the event of a crash. The program would further complement the safety achieved by pedestrian automatic emergency braking by measuring the safety performance of new vehicles to pedestrian impacts and encouraging safer vehicle designs for pedestrians.

2022–2023 Timeframe

- NHTSA plans to propose using the THOR–50M in NCAP's full frontal impact tests and the WorldSID–50M in the program's side impact barrier and side impact pole tests soon after work commences to add the dummies to 49 CFR part 572 and FMVSSs.[226] The Agency would inform the public (in request for comment notices) how these crash test dummies would be utilized in various NCAP test modes.
- In the December 2015 notice, NHTSA announced it would like to include a frontal oblique crash test in NCAP.[227] In response to that notice, commenters requested that the Agency provide the public with additional information on the target population as well as costs and benefits. They also argued that countermeasure studies have not been completed and questioned the repeatability and reproducibility of both the test procedure and the oblique moving deformable barrier. NHTSA has continued its frontal oblique research and kept the public informed of its findings.[228] A cornerstone of the procedure is the use of THOR–50M dummies in the driver and right front passenger positions. NHTSA plans to determine in 2022 whether this new crash test mode is appropriate for inclusion in an FMVSS and/or NCAP. If

[218] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(c)(4).

[219] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(c)(1)(B).

[220] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(c)(2)(A).

[221] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(c)(2)(B).

[222] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(c)(3).

[223] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(e).

[224] Public Law 117–58, Sec. 24213(c)(1); 49 U.S.C. 32310(d).

[225] 80 FR 78521 (Dec. 16, 2015), pp. 78547–78550.

[226] NHTSA included new rulemakings in the Spring 2020 Regulatory Agenda that would adopt the THOR–50M and WorldSID–50M into NHTSA's regulation for anthropomorphic test devices, 49 CFR part 572 (*https://www.reginfo.gov,* RIN 2127–AM20 and *https://www.reginfo.gov,* RIN 2127–AM22, respectively). NHTSA also included rulemakings that would adopt use of the THOR–50M and WorldSID–50M at the manufacturers' option in NHTSA compliance tests for FMVSS No. 208, ''Occupant crash protection,'' (*https://www.reginfo.gov,* RIN 2127–AM21) and FMVSS No. 214, ''Side impact protection,'' (*https://www.reginfo.gov,* RIN 2127–AM23), respectively.

[227] 80 FR 78521 (Dec. 16, 2015), pages 78530 through 78531; *https://one.nhtsa.gov/Research/Crashworthiness/Small%20Overlap%20and%20Oblique%20Testing.*

[228] See *www.regulations.gov,* Docket No. NHTSA–2020–0016 for document *Repeatability and Reproducibility of Oblique Moving Deformable Barrier Test Procedure (Saunders 2018);* Saunders, J. and Parent, D., ''Repeatability and Reproducibility of Oblique Moving Deformable Barrier Test Procedure,'' SAE Technical Paper 2018–01–1055, 2018, doi:10.4271/2018–01–1055; *https://rosap.ntl.bts.gov/view/dot/41934 Structural Countermeasure Research Program; https://www.nhtsa.gov/crash-simulation-vehicle-models Vehicle Interior and Restraint Modeling* and *Structural Countermeasure Research Program* sections.

a determination is made to include the test in NCAP, the notice and comment process would follow soon thereafter.

- NHTSA will consider incorporating several additional advanced crash avoidance technologies including lighting systems for improved nighttime pedestrian visibility into NCAP in the near future, and will be announcing next steps during this timeframe. These include: (1) Adaptive driving beam headlights; (2) upgraded lower beam headlighting; (3) semiautomatic headlamp beam-switching; and (4) rear automatic braking for pedestrian protection.

2023–2024 Timeframe

- A multi-year consumer research effort is underway to modernize the vehicle safety rating section of the Monroney label. Once the consumer research is complete, the Agency plans to begin a rulemaking action in 2023 to update the Monroney label with a new labeling concept.
- Also in 2023, NHTSA plans to commence revising its 5-star safety ratings system. The Agency has sought comment on several approaches to provide consumers with vehicle safety ratings that provide more meaningful safety information and discriminate performance of vehicles among the fleet. NHTSA discusses this issue in detail in a section below.

2025–2031 Timeframe

In NHTSA's long-term component of the roadmap, NHTSA includes a variety of technologies and foci that attempt to overcome many safety challenges for which the technologies available may not be as mature or may warrant additional study from NHTSA. NHTSA is seeking stakeholder input on the appropriateness of each of these technologies for the program and whether commenters believe that these technologies will meet the program's four prerequisites within the next 5- or 10-year time frame.

NHTSA will be further assessing and developing tests for the following crash avoidance technologies: (1) Intersection safety assist; (2) opposing traffic safety assist; and (3) automatic emergency braking for all vulnerable road users (including bicyclists and motorcyclists) in all major crash scenarios including when the vehicle is turning left or right. NHTSA will also be assessing the effectiveness of systems that are or will become available in the fleet. The Agency hopes that information will be available that would support a proposal in 2025 or beyond to include these three technologies in NCAP.

Based on comments received from stakeholders, if a technology development is mature and the available data in the next several years meet the Agency's four prerequisites, NHTSA would issue a proposal for inclusion in NCAP during the five-year mid-term timeline.

VII. Adding Emerging Vehicle Technologies for Safe Driving Choices

NCAP has traditionally focused on crashworthiness technologies that protect the vehicle occupants in the event of a collision. The more advanced ADAS technologies that are the focus of this notice take the next step and provide technologies that can assist drivers, or in certain cases correct drivers' action in ways that can avoid or mitigate crashes. NHTSA has also begun to consider ways NCAP could be used to encourage technologies that protect road users other than the vehicles occupants, such as pedestrians and pedalcyclists.

As beneficial as these technologies may be, NHTSA recognizes that risky driving behaviors and poor driver choices continue to amplify crash, injury, and fatality risks on our roadways. Accordingly, NHTSA is interested in safety technologies that have the ability to address the prevalent driver behaviors that contribute to roadway fatalities. For example, there are several available and emerging safety technologies that have the potential to address speeding and drowsy-, impaired-, distracted-, and unbelted-driving, thereby reducing the risk of crashes that lead to injury or death, which are the subjects of analysis, research, and examination.

NHTSA is exploring opportunities to encourage the development and deployment of these technologies. While more must be known about the effectiveness and consumer acceptance of these systems, NHTSA strongly believes that these technologies will mature and show efficacy. In the nearer term, then, the Agency sees potential in highlighting vehicles equipped with these technologies on its website, and possibly elsewhere, to improve public awareness, and encourage vehicle manufacturer development and adoption. NHTSA will conduct research to develop objective test procedures and criteria to evaluate the performance and effectiveness of these technologies. Initiatives on these technologies would be woven into both the first and second half (*i.e.,* long-term portion) of the 10-year roadmap, depending on whether the technologies and objective tests and criteria are sufficiently developed to meet NHTSA's four prerequisites for inclusion in NCAP.

A. Driver Monitoring Systems

Driver monitoring systems use a variety of sensors and software to detect and/or infer driver state based on estimation approaches. For example, certain types of driver monitoring systems have shown promise in detecting the state of a driver's drowsiness.[229] As vehicle technologies have evolved, driver monitoring systems have been more commonly introduced and applied to various driver states, particularly as one of the countermeasures against potential misuse of ADAS. Currently, there are varied approaches to driver monitoring across vehicle and equipment manufacturers.

NHTSA is considering adding driver monitoring systems as an NCAP technology to encourage further deployment of effective driver monitoring systems into vehicles. NHTSA seeks comment on the following to help the Agency determine whether to implement driver monitoring systems in NCAP:

(62) What are the capabilities of the various available approaches to driver monitoring systems (*e.g.,* steering wheel sensors, eye tracking cameras, etc.) to detect or infer different driver state measurement or estimations (*e.g.,* visual attention, drowsiness, medical incapacity, etc.)? What is the associated confidence or reliability in detecting or inferring such driver states and what supporting data exist?

(63) Of further interest are the types of system actions taken based on a driver monitoring system's estimate of a driver's state. What are the types and modes of associated warnings, interventions, and other mitigation strategies that are most effective for different driver states or impairments (*e.g.,* drowsy, medical, distraction)? What research data exist that substantiate effectiveness of these interventions?

(64) Are there relevant thresholds and strategies for performance (*e.g.,* alert versus some degree of intervention) that would warrant some type of NCAP credit?

(65) Since different driver states (*e.g.,* visual distraction and intoxication) can result in similar driving behaviors (*e.g.,* wide within-lane position variability), comments regarding opportunities and

[229] Brown, T., Lee, J., Schwarz, C., Fiorentino, D., McDonald, A., Traube, E., Nadler, E. (2013). Detection of Driver Impairment from Drowsiness. *23rd Enhanced Safety of Vehicles Conference,* Seoul, Republic of Korea. May 2013. Paper Number 13–0346.

tradeoffs in mitigation strategies when the originating cause is not conclusive are of specific interest.

(66) What types of consumer acceptance information (*e.g.,* consumer interest or feedback data) are available or are foreseen for implementation of different types of driver monitoring systems and associated mitigation strategies for driver impairment, drowsiness, or visual inattention? Are there privacy concerns? What are the related privacy protection strategies? Are there use or preference data on a selectable feature that could be optionally enabled by consumers (*e.g.,* for teen drivers by their parents)?

B. Driver Distraction

According to NHTSA's statistics, driver distraction resulted in at least 3,000 known deaths in 2019.[230] Often discussions regarding distracted driving center around cell phone use and texting, but distracted driving also includes other activities such adjusting the radio or climate controls or accessing other in-vehicle systems. In-vehicle devices and Human-Machine Interfaces (HMI) can be strategically designed to avoid or limit opportunities for driver distraction.[231] Easy access to manual controls in traditional or expected locations can minimize the amount of time a driver's eyes are off the road and hands are off the steering wheel, as well as the time needed for the driver to activate the control quickly in time-critical traffic conflict scenarios (*e.g.,* a driver reaches to activate the horn button in a crash-imminent situation, but finds that the control of horn activation is not in the expected, typical location).

NHTSA seeks comment on the following:

(67) What in-vehicle and HMI design characteristics would be most helpful to include in an NCAP rating that focuses on ease of use? What research data exist to support objectively characterizing ease of use for vehicle controls and displays?

(68) What are specific countermeasures or approaches to mitigate driver distraction, and what are the associated effectiveness metrics that may be feasible and appropriate for inclusion in the NCAP program? Methods may include driver monitoring and action strategies, HMI design considerations, expanded in-motion secondary task lockouts, phone application/notification limitations while paired with the vehicle, etc.

(69) What distraction mitigation measures could be considered for NCAP credit?

C. Alcohol Detection

Alcohol-impaired driving continues to be a pervasive contributing factor to roadway fatalities, with over 10,000 deaths in the U.S. in 2019.[232] NHTSA has explored many ways in which alcohol-impaired driving risks can be effectively mitigated both through vehicle technologies and strategic public outreach and enforcement.[233] In 2020, NHTSA published a Request for Information notice seeking input on *Impaired Driving Technologies* in the **Federal Register**.[234] Specifically, the notice requested information on available or late stage technology under development for impaired driving detection and mitigation. A total of 12 comments were received.[235] Comments were submitted about emerging technologies that can directly measure impairment though blood alcohol concentration at the beginning of a trip as well as technologies that infer alcohol impairment through a combination of driver monitoring and other vehicle sensors tracking during the course of a trip.

NHTSA seeks comment on the following aspects of alcohol detection systems:

(70) Are there opportunities for including alcohol-impairment technology in NCAP? What types of metrics, thresholds, and tests could be considered? Could voluntary deployment or adoption be positively influenced through NCAP credit?

(71) How can NCAP procedures be described in objective terms that could be inclusive of various approaches, such as detection systems and inference systems? Are there particular challenges with any approach that may need special considerations? What supporting research data exist that document relevant performance factors such as sensing accuracy and detection algorithm efficacy?

(72) When a system detects alcohol-impairment during the course of a trip, what actions could the system take in a safe manner? What are the safety considerations related to various options that manufacturers may be considering (*e.g.,* speed reduction, performing a safe stop, pulling over, or flasher activation)? How should various actions be considered for NCAP credit?

(73) What is known related to consumer acceptance of alcohol-impaired driving detection and mitigation functions, and how may that differ with respect to direct measurement approaches versus estimation techniques using a driver monitoring system? What consumer interest or feedback data exist relating to this topic? Are there privacy concerns or privacy protection strategies with various approaches? What are the related privacy protection strategies?

D. Seat Belt Interlocks

Seat belt use in passenger vehicles saved an estimated 14,955 lives in 2017.[236] The national seat belt use rate in the United States was 90.7 percent in 2019.[237] Among the 22,215 passenger vehicle occupants killed in 2019, almost half (47 percent) were unrestrained. For those passenger vehicle occupants who survived crashes where someone else died, only 14 percent were unrestrained compared to 47 percent of those who died.[238] [239]

Currently, NHTSA uses an array of countermeasures, including the Click It or Ticket campaign and State primary enforcement laws, to encourage seat belt use. The Agency requires seat belt reminders for the driver's seat.[240] As of the 2018 model year, about 95 percent of vehicles voluntarily offer front passenger warnings. NHTSA also informs consumers searching for vehicle ratings on *www.NHTSA.gov* as to the availability of optional front passenger and rear seat belt reminder systems, which typically provide a visual and auditory warning to the driver at the onset of a trip and if a passenger unbuckles during a trip.

Methods for detecting seat belt misuse have advanced in recent years. A 2018 NHTSA report, ''Performance Assessment of Prototype Seat Belt Misuse Detection System,'' showed that

[230] National Center for Statistics and Analysis. (2020, December). *Overview of Motor Vehicle Crashes in 2019.* (Traffic Safety Facts. Report No. DOT HS 813 060). Washington, DC: National Highway Traffic Safety Administration.

[231] In 2013, NHTSA published ''Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices.'' These voluntary guidelines apply to original equipment in-vehicle electronic devices used by the driver to perform secondary tasks (communications, entertainment, information gathering, navigation tasks, etc. are considered secondary tasks) through visual-manual means. *https://www.federalregister.gov/documents/2013/04/26/2013-09883/visual-manual-nhtsa-driver-distraction-guidelines-for-in-vehicle-electronic-devices.*

[232] Ibid.

[233] NHTSA has researched the Driver Alcohol Detection System for Safety (DADSS) program.

[234] 85 FR 71987 (November 12, 2020).

[235] *https://www.regulations.gov/document/NHTSA-2020-0102-0001/comment.*

[236] DOT HS 812 683. Latest agency estimate available.

[237] DOT HS 812 875.

[238] DOT HS 813 060.

[239] Based on known restraint use. Restraint use was unknown for 8.7 percent of passenger vehicle occupant fatalities in 2019.

[240] 49 CFR 571.208.

the system correctly identified seat belt misuse in 95 percent of trials on average across multiple common seat belt misuse scenarios.[241] This type of seat belt misuse or non-use detection could be coupled with various types of seat belt interlock systems to encourage seat belt use. Although NHTSA is not aware of any such system being currently in production, various prototype systems have been developed by manufacturers.[242] These systems could include transmission interlock, ignition interlock, and entertainment system interlock. Such systems could prevent drivers from shifting into gear, starting their vehicle, or using their vehicle's entertainment system, respectively, if the driver and/or front passenger is unbelted. Another potential strategy could be speed limiter interlock systems. Such a system could first issue a seat belt reminder warning if the driver begins driving and is unbelted, and then automatically reduce vehicle speed to a very low speed after a certain warning period if the driver remains unbelted.

NHTSA requests comment on the following related to seat belt interlock systems:

(74) Should NCAP consider credit for a seat belt reminder system with a continuous or intermittent audible signal that does not cease until the seat belt is properly buckled (*i.e.,* after the 60 second FMVSS No. 208 minimum)? What data are available to support associated effectiveness? Are certain audible signal characteristics more effective than others?

(75) Is there an opportunity for including a seat belt interlock assessment in NCAP?

(76) If the Agency were to encourage seat belt interlock adoption through NCAP, should all interlock system approaches be considered, or only certain types? If so, which ones? What metrics could be evaluated for each? Should differing credit be applied depending upon interlock system approach?

(77) Should seat belt interlocks be considered for all seating positions in the vehicle, or only the front seats? Could there be an opportunity for differentiation in this respect?

(78) What information is known or anticipated with respect to consumer acceptance of seat belt interlock systems and/or persistent seat belt reminder systems in vehicles? What consumer interest or feedback data exist on this topic?

(79) Could there be an NCAP opportunity in a selectable feature that could be optionally engaged such as in the context of a ''teen mode'' feature?

E. Intelligent Speed Assist

Speeding continues to be one of the critical factors in fatal crashes on American roadways. Specifically, driving too fast for conditions and exceeding the posted limit are two prevalent factors that contribute to traffic crashes. For more than two decades, NHTSA has identified speed as being a factor in at least nearly one-third of all motor vehicle related fatalities. For example, in 2019, of the 36,096 traffic-related fatalities occurred on U.S. roadways, 9,478 of those were positively identified as speeding-related.[243] These totals may underreport speeding, potentially to a significant degree, as they are based on whether any driver in the crash was charged with a speeding-related offense or if a police officer indicated that racing, driving too fast for conditions, or exceeding the posted speed limit was a contributing factor in the crash. As this reporting is based on aggregated police actions rather than an engineering analysis of individual crashes, it may tend to underestimate the presence of speeding, particularly in crashes where the speeding was not clearly obvious but still a factor in either the occurrence or severity of the crash.

Too few drivers view speeding as an immediate risk to their personal safety or the safety of others, including pedestrians and vulnerable road users. Yet, the consequences of speeding include: Greater potential for loss of vehicle control; reduced effectiveness of occupant protection equipment; increased stopping distance after the driver perceives a danger; increased degree of crash severity leading to more severe injuries; economic implications of a speed-related crash; and increased fuel consumption and cost. The probability of death, disfigurement, or debilitating injury grows with higher speed at impact.

NHTSA engages with State and local jurisdictions as well as national law enforcement partners to provide funding and educational materials which address speeding. Speed limiter features, which prevent a vehicle from traveling over a certain speed by limiting engine power, are available in the U.S. market and widely used in heavy-duty tractor-trailers and other fleet-based vehicles. In addition, nearly all vehicles are equipped with a mechanism that limits their top-end speed, even if that speed is quite high. These systems either prevent a vehicle from exceeding a preset specific speed regardless of location, or they use GPS and/or camera data to determine the speed limit of the current road and apply mitigation measures to reduce speeding. Vehicles equipped with an intelligent speed assist system can display the current speed limit to the driver at all times. Should the driver exceed the speed limit for the road, the system can provide a visual or auditory alert or actively slow the vehicle to an appropriate speed. Typically, many existing intelligent speed assist systems can be temporarily overridden by the driver by depressing the accelerator pedal firmly.

NHTSA is committed to addressing this important safety issue to further reduce fatalities and injuries. NHTSA requests comment on the following aspects of intelligent speed assist systems in passenger vehicles as well as other approaches that are not discussed in this notice.

(80) Should NHTSA take into consideration systems, such as intelligent speed assist systems, which determine current speed limits and warn the driver or adjust the maximum traveling speed accordingly? Should there be a differentiation between warning and intervention type intelligent speed assist systems in this consideration? Should systems that allow for some small amount of speeding over the limit before intervening be treated the same or differently than systems that are specifically keyed to a road's speed limit? What about for systems that allow driver override versus systems that do not?

(81) Are there specific protocols that should be considered when evaluating speed assist system functionality?

(82) What information is known or anticipated with respect to consumer acceptance of intelligent speed assist systems? What consumer interest or feedback data exist on this topic?

(83) Are there other means that the Agency should consider to prevent excessive speeding?

F. Rear Seat Child Reminder Assist

Data indicate that since 1998, nearly 900 children (an average of 38 per year) have died in the U.S. of hyperthermia (vehicular heatstroke) because they were left or became trapped in a hot vehicle. 2018 and 2019 saw a record number of vehicular heatstroke related deaths at 53

[241] DOT HS 812 496.

[242] ''NHTSA' Research on Seat Belt Interlocks,'' SAE Government Industry Meeting, January 24–26, 2018.

[243] Traffic Safety Facts 2019 ''*A Compilation of Motor Vehicle Crash Data*.'' U.S. Department of Transportation. National Highway Traffic Safety Administration.

each year.[244] Children were in the vehicles due to a variety of circumstances—some gain entry to a parked vehicle, whereas over 50 percent are forgotten in the vehicle by caregivers.[245]

To address these tragedies, many companies have developed aftermarket devices to remind parents and caregivers that a child may be left inside the vehicle. NHTSA has assessed several products and developed a test methodology for evaluating future products.[246] NHTSA subsequently opened a public docket inviting all interested parties to submit information regarding efforts or technological innovations to help prevent vehicular heatstroke.[247] Also, NHTSA has media campaigns, such as ''Where's Baby? Look Before You Lock,'' to raise awareness to parents and caregivers on the dangers of vehicular heatstroke.

In recent years, in-vehicle rear seat child reminder technology has been introduced into a number of vehicle makes and models. Many of these technological solutions utilize ''door logic'' to determine if there is potentially a child in the rear seat of the vehicle. The vehicle door logic checks to see if the rear seat doors were opened and closed at the start of the trip and then displays a reminder in the dash board with an audio cue for the driver to check the back seat when the vehicle is turned off. In September 2019, the Alliance of Automobile Manufacturers and the Association of Global Automakers (now collectively known as the Alliance for Automotive Innovation) announced that a voluntary agreement had been formed by its member companies to incorporate rear seat child reminder systems into their vehicles as standard equipment no later than the 2025 model year.[248]

NHTSA requests comment on the following issues related to rear seat child reminder systems designed to prevent vehicular heatstroke.

(84) If NHTSA considers this technology for inclusion in NCAP, are door logic solutions sufficient? Should NHTSA only consider systems that detect the presence of a child?

(85) What research data exist to substantiate differences in effectiveness of these system types?

(86) Are there specific protocols that should be considered when evaluating these in-vehicle rear seat child reminder systems?

(87) What information is known or anticipated with respect to consumer acceptance of integrated rear seat child reminder systems in vehicles? What consumer interest or feedback data exist on this topic?

VIII. Revising the 5-Star Safety Rating System

NHTSA is seeking comment on several approaches to provide consumers with vehicle safety ratings that provide more meaningful safety information and provide consumers with more ways to determine relative performance of vehicles among the fleet. In the current 5-star safety ratings system, as described in detail in the July 2008 final decision notice, injury readings recorded from crash test dummies used in NCAP's frontal impact, side impact barrier, and side impact pole tests are assessed using injury risk curves designed to predict the chance of a vehicle's occupant receiving similar injuries.[249] For each occupant in each crash test, the risks of injury to each body region assessed are combined to produce a combined probability of injury to each occupant. The combined probabilities of injury for each occupant are divided by a predetermined baseline risk of injury. This baseline risk of injury approximates the fleet average injury risk for each crash test. Dividing each combined occupant probability of injury by the baseline risk of injury results in a relative assessment of that occupant's combined injury risk versus a known fleet average. These calculations result in six summary scores for each vehicle representing the relative risk of injury for the following occupants: (1) The driver and front seat passenger in the frontal impact test; (2) the driver and rear seat passenger in the side impact barrier test; (3) the driver in the side impact pole test; and (4) the relative risk for all occupants in rollovers with respect to a baseline injury risk. These relative risks are then converted to star ratings to help consumers make informed vehicle purchasing decisions.

NHTSA seeks public comment on a few potential concepts it could use to develop a new 5-star safety ratings system in the future. Some areas of consideration discussed below could be used in conjunction with one another, while others could work better as standalone options. Ideally, any future 5-star safety ratings system should not only fulfill the program mission, but also be sufficiently flexible to allow for continuing updates to NCAP to encourage further vehicle safety improvements.

A. Points-Based Ratings System Concept

NHTSA is seeking comment on the use of a potential points-based system to calculate future 5-star safety ratings for the crashworthiness testing program when the Agency decides to update that program. In this system, star ratings could be assigned directly from point values related to the results from crash test dummies. The current system is based on a linear combination of the probability of injury for multiple body regions, some at different severity levels, which can result in some body regions being overlooked. A point-based system, on the other hand, would provide more flexibility to target injury criteria more representative of real-world injury incidence. The Agency believes that this potential method would provide more flexibility in the future when updating the program through a phased approach. For instance, new testing devices (*e.g.,* crash test dummies), procedures, injury measurements, or other criteria could be added to the 5-star-ratings system. Points could be based on critical injury risk curve values or on criteria, such as reference values from existing Federal regulations or other Agency data.

This points-based rating system approach would be similar to those used in other vehicle safety consumer information programs such as IIHS and Euro NCAP. Upper and lower performance targets would be established for each test dummy body region assessed in crash tests. Maximum points would be awarded if Injury Assessment Reference Values (IARVs) meet the lower target or better. A linearized number of points would be awarded for injury assessment values that are between the lower and upper targets. No points would be assigned for those that exceed the upper target for the respective body region (or perhaps the entire occupant). Risk curves would no longer be used exclusively to calculate a combined injury probability from the various body regions and ultimately star ratings. Critical risk curve values, IARVs, or other accepted injury limits would be used to establish performance targets and related points assignments.

[244] *www.noheatstroke.org.*

[245] Id.

[246] Rudd, R., Prasad, A., Weston, D., & Wietholter, K. (2015, July). Functional assessment of unattended child reminder systems. (Report No. DOT HS 812 187). Washington, DC: National Highway Traffic Safety Administration.

[247] *https://www.regulations.gov/docket?D=NHTSA-2019-0126.*

[248] *https://www.autosinnovate.org/safety/heatstroke/Automakers%20Commit%20to%20Helping%20Combat%20Child%20Heatstroke.pdf.*

[249] 73 FR 40016 (July 11, 2008), *http://regulations.gov,* Docket No. NHTSA–2006–26555–0114.

In addition to the injury criteria currently included in the 5-star safety ratings system, data to support several other injury criteria are collected for Agency monitoring and consumer information on the respective NCAP dummies (Hybrid III and ES–2re 50th percentile males, Hybrid III and SID–IIs 5th percentile females). NHTSA is seeking comment on whether any additional measurements that are not part of the existing 5-star ratings system are appropriate for use in a points-based calculation of the future star ratings.

Currently, if measurements of certain injury criteria that are included in related FMVSSs exceed standard limits, the Agency would assign a ''safety concern'' designation on its website and on the vehicle window sticker (Monroney label).[250] If measurements of certain injury criteria that are not part of FMVSSs exceed established limits, the Agency highlights those on its website (but not on the Monroney label) with footnotes. In both of these cases, the Agency seeks to inform consumers of potentially higher injury risks in body regions that are not captured by the existing 5-star safety ratings system. The Agency recognizes that consumer confusion may result from the presentation of a vehicle with high (4- or 5-star) ratings that is also assigned a safety concern or injury-related footnote. One potential solution to reduce confusion would be to implement a points-based system that allows the Agency to include the assessment of all injuries within the calculation of the star rating, even those that may not have associated risk curves. Thus, the Agency is seeking comment on the appropriate method.

Furthermore, NHTSA is exploring several options regarding the distribution of points across a potential points-based ratings system. Real-world data could be used to apportion the total number of available points to each crash mode, dummy, and/or injury value according to severity or prevalence in the field. Alternatively, each dummy or injury value could be allotted the same number of points, effectively normalizing each dummy or injury.

B. Baseline Risk Concept

Support for adjusting the baseline risk value associated with 5-star safety ratings has been mixed in the past, with some in favor and others advising against it.[251] As mentioned earlier, the Agency is again seeking comment on whether the baseline risk concept should be preserved when considering updates to its 5-star safety ratings system in the future.

With the July 2008 final decision establishing the existing 5-star safety ratings system, the concept of a relative star rating system was introduced for the first time.[252] As discussed previously, after injury readings from various body regions are converted to combined probabilities of injury risks, those combined probabilities are divided by a baseline (or average) risk of injury that is an approximation of the vehicle fleet average injury risk. Star ratings generated in NCAP today are a measure of how much more (or less) occupant protection the vehicle affords when compared to an ''average'' vehicle.

The intent of the baseline risk as described in the July 2008 notice was to update its value at regular intervals so that, as the average risk of injury decreased over time, ratings could become more stringent without changing the underlying criteria. In practice, the baseline risk has never been adjusted, which results in recent star ratings being assigned using an older benchmark less representative of current vehicle safety levels.[253]

C. Half-Star Ratings

In the December 2015 notice, the Agency sought comments on the merits of providing ratings to consumers in half-star increments. Commenters were generally supportive of the notion. In this notice, NHTSA continues to seek comment on whether the Agency should disseminate its 5-star safety ratings with half-star increments. This approach could allow better discrimination of vehicle performance for consumer information purposes by creating additional levels within the existing 1-, 2-, 3-, 4-, and 5-star levels. Though the Agency has not conducted consumer research on this potential approach, NHTSA believes that the public is familiar with the general impression of half-star ratings as it is commonly found in other consumer product rating schemes.

Future crashworthiness 5-star safety ratings systems most likely would contain more elements on which vehicles are assessed. Thus, NHTSA believes that using half-star increments may be necessary in future rating systems because they allow better discrimination of vehicle safety performance. The half-star increments, depending on future Agency decisions, could create anywhere from 9 to 11 levels[254] of discrimination for use in rating vehicles.

NHTSA could design any half-star rating system to require a vehicle to reach the minimum threshold for receiving that rating level. Ratings in a system such as this would be ''rounded down'' to the nearest half- or whole-star rating and would not be ''rounded up'' to the next half- or whole-star rating.

D. Decimal Ratings

NHTSA is also seeking comments on whether it should consider assigning star ratings using a decimal format in addition to or in place of assigning whole- or half-star ratings. The decimal rating could be based on a conversion of NCAP test results by using a linear function approach. For instance, in the current 5-star safety ratings system, this could be achieved by relating a linear function to the VSS calculation and its associated ranges. In a potential future 5-star safety ratings system, like one where the previously discussed points-based concept is used, a decimal value could also be easily integrated. Providing NCAP ratings in decimal format could provide consumers with an additional, high delineation method of discriminating vehicle performance among the fleet for purchasing reasons.

Considering these ongoing Agency initiatives currently being pursued for future NCAP upgrades, NHTSA requests comment on the following:

(88) What approaches are most effective to provide consumers with vehicle safety ratings that provide meaningful information and discriminate performance of vehicles among the fleet?

Specifically with regard to a points-based rating system, the Agency seeks comment on the following:

(89) Is the use of additional injury criteria/body regions that are not part of the existing 5-star ratings system appropriate for use in a points-based calculation of future star ratings? Some injury criteria do not have associated risk curves. Are these regions appropriate to include, and if so, what is the appropriate method by which to include them?

Regarding the baseline risk concept and the general concept of relative

[250] Id.

[251] This is based on comments by participants in the October 1, 2018 public meeting and respondents to the related docket *https://www.regulations.gov/docket?D=NHTSA-2018-0055*.

[252] Prior to the 2010 program enhancements, NCAP star ratings were based on an absolute, independent scale of combined injury probability. That is, the combined probability of injury from a given occupant was converted directly into a star rating with no intermediate calculation except rounding.

[253] Park, B., Rockwell, T., Collins, L., Smith, C., Aram, M. (2015), The enhanced U.S. NCAP: Five years later. *24th Enhanced Safety of Vehicles Conference,* Gothenburg, Sweden, June 2015, Paper Number 15–0314.

[254] Depending on possible rating scales from 0–5 stars, 0.5–5 stars, or 1–5 stars, the amount of total distinct ratings available would vary.

ratings, NHTSA is seeking comment on the following:

(90) Should a crashworthiness 5-star safety ratings system continue to measure a vehicle's performance based on a known or expected fleet average performer, or should it return to an absolute system of rating vehicles?

(91) Considering the basic structure of the current ratings system (combined injury risk), the potential overlapping target populations for crashworthiness and ADAS program elements, as well as other potential concepts mentioned in this document such as a points-based system, what would the best method of calculating the vehicle fleet average performance be?

(92) Should the vehicle fleet average performance be updated at regular intervals, and if so, how often?

(93) What is the most appropriate way to disseminate these updates or changes to the public?

Considering a change in approach to how to present star ratings to the public, NHTSA seeks comment on the following:

(94) Should the Agency disseminate its 5-star ratings with half-star increments?

(95) Should the Agency assign star ratings using a decimal format in addition to or in place of whole- or half-stars?

E. Rollover Resistance Testing Program

Currently, there are two rollover resistance tests that the Agency conducts and are part of the existing 5-star safety ratings system. The first component of this assessment is the static measurement of the vehicle's center of gravity height and the track width to determine the vehicle's static stability factor. The second component of this assessment is the dynamic rollover test (Fishhook test) that simulates a driver taking a panic steering action in a loss-of-control situation. The Agency uses two formulas (no tip-up and tip-up results) for calculating the risk of rollover and then assigns a rollover rating based on the risk. NHTSA sought comment on the approach published in the December 2015 notice to recalculate its current rollover risk curve given the full implementation of electronic stability control (ESC) systems as standard equipment in all vehicles manufactured on or after September 1, 2011. Commenters who responded to the December 2015 notice were generally supportive of the Agency's desire to update the rollover risk curve to reflect the role of ESC deployment. However, few specific comments on the appropriateness of the approach that was described in the notice were received at the time.

NHTSA is not proposing changes to its two existing rollover resistance tests at this time. However, when the Agency proposes changes to the existing 5-star ratings system, it may be feasible to consider an update to how it assesses the rollover resistance testing component. Thus, the Agency is seeking comment on whether any future overall vehicle ratings should continue to include rollover resistance evaluations. Also, if the Agency updates the rollover risk curve, suggestions on how to transition that data into a future overall vehicle rating would be encouraged. The Agency expects that any future overall vehicle ratings would, at minimum, require reweighting the contribution of each test mode to that overall rating and thus the need to determine the most appropriate program area to include the rollover resistance tests.

(96) Should the Agency continue to include rollover resistance evaluations in its future overall ratings?

IX. Other Activities

A. Programmatic Challenges With Self-Reported Data

Since model year 2011, vehicle manufacturers have been reporting to NHTSA their internal test data that show whether vehicles equipped with the recommended ADAS technologies pass NCAP's system performance test requirements in order to receive credit from the Agency. NHTSA assesses the information provided and then assigns check marks for systems whose conformance with NCAP's performance test requirements are supported by the data. As the Agency stated in its July 2008 final decision notice, commenters were generally supportive of NHTSA's plan to use self-reported data from the vehicle manufacturers, in conjunction with its own spot-check verification testing, to determine whether vehicles met NCAP's system performance test requirements.[255] The process by which the Agency has accepted self-reported ADAS technology data for recommended technologies has been crucial to the successful administration of the program.

However, this process has not been without challenges. Throughout the administration of the ADAS assessment program in NCAP, NHTSA has identified inconsistencies in vehicle manufacturers' self-reported data submissions. The Agency has determined that many of these inconsistencies stem from unfamiliarity with NCAP's system performance test procedures, including the use of test targets and other parameters.

It is critical to maintain program credibility and public trust when accepting manufacturers' ADAS self-reported data and disseminating it to the public. One approach to addressing some of the aforementioned challenges is to encourage all vehicle manufacturers to provide NHTSA with ADAS self-reported data from an independent test facility that meets criteria demonstrating competence in NCAP testing protocols. For instance, NHTSA's rigorous procurement process for awarding contracts to test laboratories provides that qualified laboratories meet specific competence requirements.

To address the challenges mentioned above, NHTSA is considering refusing to accept self-reported data and not posting recommendations for the vehicle's systems on its website, when:

- Manufacturers' self-reported ADAS test data is provided from a test facility that is not designated as NHTSA's contracted test laboratory, *or*
- The corresponding ADAS tests are not conducted in accordance with NCAP's testing protocols (including test devices).

NHTSA seeks comment on the following:

(97) Considering the Agency's goal of maintaining the integrity of the program, should NHTSA accept self-reported test data that is generated by test laboratories that are not NHTSA's contracted test laboratories? If no, why not? If yes, what criteria are most relevant for evaluating whether a given laboratory can acceptably conduct ADAS performance tests for NCAP such that the program's credibility is upheld?

(98) As the ADAS assessment program in NCAP continues to grow in the future to include new ADAS technologies and more complex test procedures, what other means would best address the following program challenges: Methods of data collection, maintaining data integrity and public trust, and managing test failures, particularly during verification testing?

B. Website Updates

NHTSA uses its website and the safety rating section of the Monroney label to convey to consumers vehicle safety information provided by NCAP. Although the Monroney label is an important tool NHTSA uses to communicate vehicle safety ratings to consumers at the point of sale, it has limitations:

[255] 72 FR 3473 (Jan. 25, 2007), Docket No. NHTSA–2006–26555.

(1) The Agency must undergo a rulemaking action to change any of its content, including minor and non-substantive changes.[256]

(2) The label is limited to a certain size, only some of which is dedicated to NCAP information, which only allows for the communication of limited safety information.

(3) By virtue of being posted on individual vehicles, the label provides limited utility as a comparative shopping tool unless compared to labels on vehicles in the same physical location.

Thus, NHTSA uses its website to communicate a wealth of information about vehicle safety beyond what is displayed on the Monroney label. NHTSA has structured the information displayed on its website to align with the structure of the Monroney label. The same crashworthiness and rollover star ratings are shown on both the label and the website. However, crash avoidance (ADAS technologies) recommendations are not included on the Monroney label because they were too new to be included at the time of the most recent Monroney label update, whereas they are provided on the website.

In light of the Monroney label limitations, increasingly complex vehicle ratings and results, and NHTSA's desire to communicate safety information as timely as possible, NHTSA is considering enhancing the information on its website. However, some of these enhancements may necessitate that the information provided on the Monroney label and website deviate from one another in structure or in content. There are limitations on the amount of information that can be usefully conveyed on the Monroney label, so NHTSA is currently considering placing some information on the website alone. However, while it makes sense to provide additional information and comparative tools on the website, NHTSA is concerned that consumers could be confused if the information in both places is not presented in the same manner. For example, the Monroney label is currently limited to displaying whole star ratings. If, as a result of this RFC, NHTSA decides to improve the differentiation between vehicles by displaying star ratings on its website using new methods like a decimal equivalent value or half-stars, such a discrepancy between the Monroney label and the website may confuse consumers.

During the October 2018 public meeting, Consumers Union suggested that NHTSA could provide ratings on its website in a ''more granular, sortable and readily comparable manner.'' Currently, the website's functionality allows for users to input limited search terms. For instance, a consumer may search for all vehicles in a given model year, all vehicles of a specific make, or vehicles with a specific model name. Consumers may then filter these results by body style, but the current body style categories are very broad and can encompass hundreds of models. Consumers are currently limited to viewing ten vehicle models at a time in search results, meaning that they may need to sift through many pages of results if they are simply browsing and do not have a particular make or model in mind. NHTSA plans to address these issues by improving the organization and versatility of the safety ratings data presented to the public.

Once a consumer selects a vehicle for further details, they may choose to compare up to three vehicles, but they must input the year, make, and model of the vehicles to be compared. NHTSA intends to make changes to its *www.nhtsa.gov* user interface to allow for simpler comparisons between vehicle manufacturers and types. For example, when a consumer searches for safety rating information for a particular make and model, similar vehicles could also be shown. These vehicles could be classified according to body style. The Agency expects to make other changes to *NHTSA.gov* to increase the comparability of safety information.

NHTSA continues to seek comment on the following aspects of vehicle information provided on its website:

(99) What is the potential for consumer confusion if information on the Monroney label and on the website differs, and how can this confusion be lessened?

(100) What types of vehicles do consumers compare during their search for a new vehicle? Do consumers often consider vehicles with different body styles (*e.g.,* midsized sedan versus large sport utility)?

(101) When searching for vehicle safety information, do consumers have a clear understanding for which vehicles they are seeking information, or do they browse through vehicle ratings to identify vehicles they may wish to purchase?

(102) When classifying vehicles by body style, what degree of classification is most appropriate? For example, when purchasing a passenger vehicle, do consumers consider all passenger vehicles, or are they inclined to narrow their searches to vehicles of a subset of passenger vehicles (*e.g.,* subcompact passenger vehicle)?

(103) Within the context of the updates considered in this notice, what is the most important top-level safety-related information that consumers should be able to compare amongst vehicles? Which of these pieces of information should consumers be able to use to sort and filter search results?

C. Database Changes

NHTSA wishes to take this opportunity to inform the public about other ways the Agency is significantly enhancing the NCAP program. We have undertaken a considerable developmental effort to modernize the OEM submission process and our processing of data, so that consumer information can be provided to consumers quickly and accurately. We are not requesting comment in this section but are presenting this information for the benefit of the reader.

Each year NHTSA requests vehicle manufacturers to submit new model year vehicle information voluntarily on new passenger cars and light trucks with gross vehicle weight ratings of 4,536 kg (10,000 pounds) or less. This information is used by NCAP primarily for consumer information on the Agency's website, presentation on the vehicle window stickers, and for the selection of new model year vehicles to be tested under NCAP.

The manner in which NHTSA and vehicle manufacturers communicate information has changed over the years—from mailed letters and faxes to spreadsheets and emails. However, NHTSA realized a modernized process of data submission, collection, analysis, and dissemination is necessary due to the ever-growing list of data elements needed to support an evolving test portfolio and diverse vehicle fleet. In the last model year alone, more than 400 makes and models of passenger vehicles were sold in the United States, thus requiring vehicle manufacturers not only to assemble detailed new vehicle data and submit them to NHTSA, but also NHTSA to collect, sort, and analyze tremendous amounts of information.

Managing this data has become more complex, utilizing electronic spreadsheets and email. In addition to processing spreadsheets from more than 20 organizations, maintaining version control, checking data for accuracy, clarifying ambiguities, sending ratings letters, and processing requests have limited the ability of the Agency's current IT systems in storing and

[256] The Agency implemented the Monroney label requirement by regulation (49 CFR 575.302) pursuant to Section 10307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act; A Legacy for Users (SAFETEA–LU).

analyzing data. These limitations have been exacerbated by the incorporation of ADAS assessments into NCAP, which accepts self-reported test data from vehicle manufacturers. Historically, these ADAS technologies have been available in a mix of vehicles within a technology package or trim line at the make and model level, which can cause consumer confusion as to which vehicles have the technologies. Furthermore, as NCAP is only able to offer consumer information details at the make and model level, the additional complexity of parsing trim lines and technology packages has been overly burdensome given NHTSA's current resources and limitations.

NHTSA is mindful that any expansion in NCAP's ADAS assessment program will create a long-term need to collect considerably more data elements from vehicle manufacturers. The current data collection process of spreadsheets and emails will not suffice to fulfill this need. To that end, NHTSA has undertaken a multi-year, multi-phase project to modernize the way in which NCAP communicates with and receives data from relevant stakeholders. NHTSA is currently developing a new, secure online web portal and database that will be used to send, receive, track, store, and process program data elements and communications.

The first phase of this online portal and database development focuses on the data submission process from the vehicle manufacturers to NHTSA. The online web portal would allow designated representatives from each vehicle manufacturer to submit data and correspondence by secure and trackable means. Vehicle manufacturers would be able to have multiple representatives contribute to and approve the data submissions, and submissions could be done in a more dedicated and focused manner than is currently feasible with conventional spreadsheets. The data submission application would include business rules to help vehicle manufacturers identify invalid data or typographical errors. The database portion of the project would allow NHTSA not only to capture and store data more efficiently, but also to manage program functions more quickly—such as faster posting of NCAP ratings to the Agency's website. In addition, it would allow NCAP to determine twin and carryover status in a timelier manner. Furthermore, the database is significantly more flexible and robust than existing spreadsheets and would allow more accurate processing of manufacturers' self-reported data submitted for the ADAS assessment program as well as the side air bag out-of-position testing program. In addition, this database would allow NCAP to review vehicle fleet trends and easily compare and track changes in individual vehicle models from one model year to the next. This phase of the project has already produced a prototype, and NHTSA has received preliminary feedback from initial beta testing.

A second phase of the project will focus on data and correspondence between NHTSA and its test laboratories. NCAP collects vehicle-specific test setup information from the vehicle manufacturer and separately transmits this data to its designated test laboratory. This phase of the project would streamline the way in which the program communicates its day-to-day operations that include the review, transmission, and archive of test data. The result of these upgrades would allow NCAP to schedule tests, review test data, analyze test anomalies and failures, respond to manufacturer contests, and publish safety ratings in a timelier manner.

X. Economic Analysis

The various changes in NCAP discussed in this proposal all enable a rating system that improves consumer awareness of ADAS safety features, and encourages manufacturers to accelerate their adoption. This accelerated adoption of ADAS would drive any economic and societal impacts that result from these changes, and are thus the focus of this discussion of economic analysis. Hence, the Agency has considered the potential economic effects for ADAS technologies proposed for inclusion in NCAP and the potential benefit of introducing a rating system for ADAS technologies.

Unlike crashworthiness safety features, where safety improvements are attributable to improved occupant protection when a crash occurs, the impact that ADAS technologies have on fatality and injury rates is a direct function of their effectiveness in preventing crashes or reducing the severity of the crashes they are designed to mitigate. This effectiveness is typically measured by using real-world statistical data, laboratory testing, or Agency expertise.

With respect to vehicle safety, the Agency believes, as discussed in detail in this notice, the four proposed ADAS technologies have the potential to reduce vehicle crashes and injury severities further. As cited in this notice, researchers have conducted preliminary studies to estimate the effectiveness of ADAS technologies. Although these studies have been limited to certain models or manufacturers, which may not represent the entire fleet, they do illustrate how these systems can provide safety benefits. Thus, although the Agency does not have sufficient data to determine the monetized safety impacts resulting from these technologies in a way similar to that frequently done for mandated technologies—when compared to the future without the proposed update to NCAP, NHTSA expects that these changes would likely have substantial positive safety effects by promoting earlier and more widespread deployment of these technologies.

NCAP also helps address the issue of asymmetric information (*i.e.,* when one party in a transaction is in possession of more information than the other), which can be considered a market failure.[257] Regarding consumer information, the introduction of a potential new ADAS rating system is anticipated to provide consumers additional vehicle safety information (*e.g.,* rating based on ADAS performance and capability as well as the types of ADAS in vehicles) as opposed to the information provided in the current program (*e.g.,* check mark based on ADAS performance as pass/fail) to help them make more informed purchasing decisions by better presenting the relative safety benefits of different ADAS technologies. NHTSA believes that the future ADAS rating would increase consumer awareness and understanding of the safety benefits in these technologies, and, in turn, incentivize vehicle manufacturers to offer the ADAS technologies that lead to higher ratings across a broader selection of their vehicles. Furthermore, as these ADAS technologies mature and become more reliable and efficient, a large portion of vehicles equipped with such systems would achieve higher ADAS ratings, and in turn consumers would have an increasing number of safer vehicles to choose from. There is an unquantifiable value to consumers in receiving accurate and comparable performance information about those technologies among manufacturers, makes, and models.

According to NHTSA sponsored research,[258] IIHS/HLDI predicted that the number of vehicles equipped with ADAS technologies, including BSW and Lane Keeping Warning, will increase

[257] See.

[258] See *https://www.iihs.org/media/9517c308-c8d5-42e6-80fd-a69ecd9d2128/3aaYqQ/HLDI%20Research/Bulletins/hldi_bulletin_37-11.pdf.* Bulletin Vol. 34, No. 28: September 2017, ''Predicted availability and fitment of safety features on registered vehicles,'' Highway Loss Data Institute.

substantially from 2020 to 2030 and reach near full market penetration in 2050. Although the Agency has limited data on costs of ADAS technologies to consumers, assuming consumer demand for safety remains high, the future ADAS rating system would likely accelerate the full adaptation of the four technologies included in this RFC—not to mention the four existing ones. Nevertheless, the Agency does not have sufficient data, such as unit cost and information on how soon the full adaptation will be reached with the ADAS rating, to predict the net increase in cost to consumers, with a high degree of certainty.

XI. Public Participation

Interested parties are strongly encouraged to submit thorough and detailed comments relating to each of the relevant areas discussed in this notice. Please see Appendix B for a summarized list of specific questions that have been posed in this notice. Comments submitted will help the Agency make informed decisions as it strives to advance NCAP by encouraging continuous safety improvements for new vehicles and enhancing consumer information.

How do I prepare and submit comments?

To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, NHTSA asks that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the Agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you may submit a copy (two copies if submitting by mail or hand delivery), from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the Agency will also consider comments received after that date. Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Accordingly, we recommend that interested people periodically check the docket for new material. You may read the comments received at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *www.regulations.gov.*

XII. Appendices

Appendix A. Target Population Statistics for Crash Scenarios [259]

TABLE A–1—TARGET POPULATION STATISTICS, FCW/CIB/DBS

Crash scenarios [260]	Crashes	Fatalities	MAIS 1–5 injuries	PDOVs
2000 Rear-End, Lead Vehicle (LV) Stopped	1,099,868	474	561,842	1,719,177
2001 Rear-End, LV Slower	174,217	527	97,402	252,341
2002 Rear-End, LV Decelerated	374,624	155	196,731	587,031
2003 Rear-End, Other In-lane Vehicle Higher Speed	598	3	273	829
2009 Rear-End, Other/Unspecified	50,105	70	24,951	77,034
2300 Rear-End Possible, Other In-lane Vehicle Stopped	1,842	37	839	2,510
2301 Rear-End Possible, Other In-lane Vehicle Slower	813	6	486	1,063
2302 Rear-End Possible, Other In-lane Vehicle Decelerated	1,475	3	860	1,900
Combined Total	1,703,541	1,275	883,386	2,641,884
Percent of Total Crashes	29.4	3.8	31.5	36.3

TABLE A–2—TARGET POPULATION FOR LDW/LKA/LCA

Crash scenarios	Crashes	Fatalities	MAIS 1–5 injuries	PDOVs
100 1V Rollover 1st Event	4,411	63	3,155	2,104
150 2+V Rollover 1st Event	243	3	337	197
1000 1V, Roadway Departure (RD)	966,709	9,751	359,238	679,402
1050 2+V, Roadway Departure	43,957	1,021	32,069	55,856

[259] Wang, J.-S. (2019, March), *Target crash population for crash avoidance technologies in passenger vehicles* (Report No. DOT HS 812 653), Washington, DC: National Highway Traffic Safety Administration.

[260] The crash scenarios referenced for the FCW/CIB/DBS target population are those that comprise the subset of the 84 mutually exclusive pre-crash scenarios analyzed by VOLPE (Report No. DOT HS 812 745) that were considered relevant for the forward collision prevention crash category (Report No. DOT HS 812 653). Each of the 84 scenarios is assigned a pre-assigned number and is followed by a brief description.

TABLE A–2—TARGET POPULATION FOR LDW/LKA/LCA—Continued

Crash scenarios	Crashes	Fatalities	MAIS 1–5 injuries	PDOVs
1100 1V Cross Centerline/Median	8,560	75	2,910	6,214
1150 2+V Cross Centerline/Median	3,427	106	2,678	4,239
3000 ST Opposite Dir(OD), Head-On	32,751	2,761	37,848	23,992
3009 ST OD Forward Impact, Other	115	11	69	135
3100 ST OD, Angle Sideswipe	62,214	1,042	38,655	86,054
3200 Head-On Possible, Other Vehicle Encroaching OD	4,008	11	2,979	5,019
Combined Total	1,126,397	14,844	479,939	863,213
Percent of Total Crashes	19.4	44.3	17.1	11.9

TABLE A–3—TARGET POPULATION FOR BSD/BSI/LCM

Crash scenarios	Crashes	Fatalities	MAIS 1–5 injuries	PDOVs
8000 LCM in Rear End	48,749	128	26,040	71,977
8001 LCM in ST SD Forward Impact	212	4	62	371
8002 LCM in ST SD AS	371,504	332	129,595	651,962
8003 LCM CT VT SD	58,389	40	20,685	99,476
8004 LCM Other	24,216	38	11,924	36,940
Combined Total	503,070	542	188,304	860,726
Percent of Total Crashes	8.7	1.6	6.7	11.8

TABLE A–4—TARGET POPULATION FOR PAEB

Crash scenarios	Crashes	Fatalities	MAIS 1–5 injuries	PDOVs
300 1V2Ped RD, Forward Impact	60,322	3,264	57,480	1,836
309 1V2Ped, Other	306	26	264	0
350 2+V2Ped	511	259	452	0
400 1V2Cyc RD, Forward Impact	50,094	531	45,529	4,910
409 1V2Cyc, Other/Unspecified	175	4	172	0
450 2+V2Cyc	234	23	169	239
Combined Total	111,641	4,106	104,066	6,985
Percent of Total Crashes	1.9	12.3	3.7	0.1

TABLE A–5—TARGET POPULATION FOR RAB/RVAB/RCTA TECHNOLOGIES

Crash scenarios	Crashes	Fatalities	MAIS 1–5 injuries	PDOVs
302 1V2Ped, Backup	2,811	44	2,590	88
402 1V2Cyc, Backup	439	3	407	48
602 1V2ParkedV, Backup	41,957	2	5,293	40,389
802 1V2Fixed Object, Backup	1,824	2	217	1,732
6000 Backing Up to Vehicle/Object	101,503	23	26,761	189,059
Combined Total	148,533	74	35,268	231,317
Percent of Total Crashes	2.6	0.2	1.3	3.2

TABLE A–6—MAPPING OF CRASH SCENARIOS WITH SAFETY SYSTEMS

Crash scenarios	1 FCW/CIB/DBS	2 LDW/LKA/LCA	3 BSD/BSI/LCM	4 PAEB	5 RAB/RvAB/ RTA
100 1V Rollover 1st Event		•			
150 2+V Rollover 1st Event		•			
200 1V Jackknife 1st Event					
250 2+V Jackknife 1st Event					
300 1V2Pedestrian Roadway Departure, Forward Impact				•	
302 1V2 Pedestrian, Backup					•

TABLE A–6—MAPPING OF CRASH SCENARIOS WITH SAFETY SYSTEMS—Continued

Crash scenarios	1 FCW/CIB/DBS	2 LDW/LKA/LCA	3 BSD/BSI/LCM	4 PAEB	5 RAB/RvAB/ RTA
309 1V2 Pedestrian, Specifics Other/Unknown				•	
350 2+V2 Pedestrian				•	
400 1V2Cyclist Roadway Departure, Forward Impact				•	
402 1V2Cyclist, Backup					•
409 1V2Cyclist, Specifics Other/Unknown				•	
450 2+V2Cyclist				•	
500 1V2Animal Roadway Departure, Avoid Animal					
502 1V2Animal, Backup					
509 1V2Animal, Specifics Other/Unknown					
550 2+V2Animal					
600 1V2Parked Vehicle Roadway Departure, Forward Impact					
602 1V2Parked Vehicle, Backup					•
609 1V2Parked Vehicle, Specifics Other/Unknown					
650 2+V2Parked Vehicle					
700 1V2Other Non-Fixed Object Roadway Departure, Forward Impact					
701 1V2Other Non-Fixed Object Roadway Departure, Traction Loss					
702 1V2Other Non-Fixed Object, Backup					
709 1V2Other Non-Fixed Object, Other					
750 2+V2Other Non-Fixed Object					
800 1V2Fixed Object Roadway Departure, Forward Impact					
801 1V2Fixed Object Roadway Departure, Traction Loss					
802 1V2Fixed Object, Backup					•
809 1V2Fixed Object, Other					
850 2+V2Fixed Object					
1000 1V, Roadway Departure		•			
1001 1V RD, Traction Loss					
1002 1V RD, Avoid Vehicle/Pedestrian/Animal					
1003 1V Forward Impact, Ped or Animal					
1004 1V Forward Impact, End Departure					
1005 1V Forward Impact, Specifics Other/Unknown					
1009 1V Other/No Impact					
1050 2+V, Roadway Departure		•			
1100 1V Cross Centerline/Median		•			
1150 2+V Cross Centerline/Median *		•			
2000 Rear-End, Lead Vehicle Stopped	•				
2001 Rear-End, LV Slower	•				
2002 Rear-End, LV Decelerated	•				
2003 Rear-End, Other In-lane Vehicle Higher Speed	•				
2009 Rear-End, Specifics Other/Unknown	•				
2101 Same Trafficway Same Direction Forward Impact, Loss Control					
2102 Rear-End Possible, Same Trafficway Same Direction Forward Impact, Avoid Vehicle					
2103 Same Trafficway Same Direction Forward Impact, Avoid Objects					
2109 Rear-End Possible, Same Trafficway Same Direction Forward Impact, Specifics Other/Unknown					
2200 Same Trafficway Same Direction, Angle-Sideswipe					
2300 Rear-End Possible, Other In-lane Vehicle Stopped	•				
2301 Rear-End Possible, Other In-lane Vehicle Slower	•				
2302 Rear-End Possible, Other In-lane Vehicle Decelerated	•				
3000 Same Trafficway Opposite Direction, Head-On		•			
3001 Same Trafficway Opposite Direction Forward Impact, Traction Loss					
3002 Same Trafficway Opposite Direction Forward Impact, Avoid Vehicle					
3003 Same Trafficway Opposite Direction Forward Impact, Avoid Object					
3009 Same Trafficway Opposite Direction Forward Impact, Other		•			
3100 Same Trafficway Opposite Direction, Angle Sideswipe		•			
3200 Head-On Possible, Other Vehicle Encroaching Opposite Direction		•			

TABLE A–6—MAPPING OF CRASH SCENARIOS WITH SAFETY SYSTEMS—Continued

Crash scenarios	1 FCW/CIB/DBS	2 LDW/LKA/LCA	3 BSD/BSI/LCM	4 PAEB	5 RAB/RvAB/ RTA
4000 Change Trafficway Vehicle Turning, Turn Across Path, Initial Opposite Direction					
4001 Change Trafficway Vehicle Turning, Turn Across Path, Initial Same Direction					
4009 Change Trafficway Vehicle Turning, Turn Across Path, Specifics Other/Unknown					
4100 Change Trafficway Vehicle Turning, Turn Into Path, Into Same Direction					
4101 Change Trafficway Vehicle Turning, Turn Into Path, Into Opposite Direction					
4109 Change Trafficway Vehicle Turning, Turn Into Path, Specifics Other/Unknown					
5000 Intersect Paths, Straight Across Path					
5009 Intersect Paths, Straight Path, Specifics, Specifics Other/Unknown					
6000 Backing Up to Vehicle/Object					•
7000 1V Negotiating a Curve					
7050 2+V Negotiating a Curve					
8000 Lane Change/Merge Before Rear-End			•		
8001 Lane Change/Merge in Same Trafficway Same Direction Forward Impact			•		
8002 Lane Change/Merge in Same Trafficway Same Direction Angle Sideswipe			•		
8003 Lane Change/Merge in Change Trafficway Vehicle Turning Initial Same Direction			•		
8004 Lane Change/Merge Other			•		
9000 Equipment Failure					
9020 Loss of Control Due to Tire/Engine/Poor Road					
9030 2+V, Left/Right Turn, Unspecified					
9040 2+V U-Turn					
9050 2+V Backing to Moving Vehicle					
9060 2+V No Impact					
9070 2+V Other					
9999 2+V Unknown					

Appendix B. Questions Asked Throughout This Notice

III. ADAS Performance Testing Program

(1) Should the Agency award credit to vehicles equipped with LDW systems that provide a passing alert, regardless of the alert type? Why or why not? Are there any LDW alert modalities, such as visual-only warnings, that the Agency should not consider acceptable when determining whether a vehicle meets NCAP's performance test criteria? If so, why? Should the Agency consider only certain alert modalities (such as haptic warnings) because they are more effective at re-engaging the driver and/or have higher consumer acceptance? If so, which one(s) and why?

(2) If NHTSA were to adopt the lane keeping assist test methods from the Euro NCAP LSS protocol for the Agency's LKS test procedure, should the LDW test procedure be removed from its NCAP program entirely and an LDW requirement be integrated into the LKS test procedure instead? Why or why not? For systems that have both LDW and LKS capabilities, the Agency would simply turn off LKS to conduct the LDW test if both systems are to be assessed separately. What tolerances would be appropriate for each test, and why?

(3) LKS system designs provide steering and/or braking to address lane departures (*e.g.,* when a driver is distracted). To help re-engage a driver, should the Agency specify that an LDW alert must be provided when the LKS is activated? Why or why not?

(4) Do commenters agree that the Agency should remove the Botts' Dots test scenario from the current LDW test procedure since this lane marking type is being removed from use in California? If not, why?

(5) Is the Euro NCAP maximum excursion limit of 0.3 m (1.0 ft.) over the lane marking (as defined with respect to the inside edge of the lane line) for LKS technology acceptable, or should the limit be reduced to account for crashes occurring on roads with limited shoulder width? If the tolerance should be reduced, what tolerance would be appropriate and why? Should this tolerance be adopted for LDW in addition to LKS? Why or why not?

(6) In its LSS Protocol, Euro NCAP specifies use of a 1,200 m (3,937.0 ft.) curve and a series of increasing lateral offsets to establish the desired lateral velocity of the SV towards the lane line it must respond to. Preliminary NHTSA tests have indicated that use of a 200 m (656.2 ft.) curve radius provides a clearer indication of when an LKS intervention occurs when compared to the baseline tests performed without LKS, a process specified by the Euro NCAP LSS protocol. This is because the small curve radius allows the desired SV lateral velocity to be more quickly established; requires less initial lateral offset within the travel lane; and allows for a longer period of steady state lateral velocity to be realized before an LKS intervention occurs. Is use of a 200 m (656.2 ft.) curve radius, rather than 1,200 m (3,937.0 ft.), acceptable for inclusion in a NHTSA LKS test procedure? Why or why not?

(7) Euro NCAP's LSS protocol specifies a single line lane to evaluate system performance. However, since certain LKS systems may require two lane lines before they can be enabled, should the Agency use a single line or two lines lane in its test procedure? Why?

(8) Should NHTSA consider adding Euro NCAP's road edge detection test to its NCAP program to begin addressing crashes where lane markings may not be present? If not, why? If so, should the test be added for LDW, LKS, or both technologies?

(9) The LKS and ''Road Edge'' recovery tests defined in the Euro NCAP LSS protocol specify that a range of lateral velocities from 0.2 to 0.5 m/s (0.7 to 1.6 ft./s) be used to assess system performance, and that this range is representative of the lateral velocities associated with unintended lane departures (*i.e.,* not an intended lane change). However, in the same protocol, Euro NCAP also specifies a range of lateral velocities from 0.3 to 0.6 m/s (1.0 to 2.0 ft./s) be used to represent unintended lane

departures during ''Emergency Lane Keeping—Oncoming vehicle'' and ''Emergency Lane Keeping—Overtaking vehicle'' tests. To encourage the most robust LKS system performance, should NHTSA consider a combination of the two Euro NCAP unintended departure ranges, lateral velocities from 0.2 to 0.6 m/s (0.7 to 2.0 ft./s), for inclusion in the Agency's LKS evaluation? Why or why not?

(10) As discussed above, the Agency is concerned about LKS performance on roads that are curved. As such, can the Agency correlate better LKS system performance at higher lateral velocities on straight roads with better curved road performance? Why or why not? Furthermore, can the Agency assume that a vehicle that does not exceed the maximum excursion limits at higher lateral velocities on straight roads will have superior curved road performance compared to a vehicle that only meets the excursion limits at lower lateral velocities on straight roads? Why or why not? And lastly, can the Agency assume the steering intervention while the vehicle is negotiating a curve is sustained long enough for a driver to re-engage? If not, why?

(11) The Agency would like to be assured that when a vehicle is redirected after an LKS system intervenes to prevent a lane departure when tested on one side, if it approaches the lane marker on the side not tested, the LKS will again engage to prevent a secondary lane departure by not exceeding the same maximum excursion limit established for the first side. To prevent potential secondary lane departures, should the Agency consider modifying the Euro NCAP ''lane keep assist'' evaluation criteria to be consistent with language developed for NHTSA's BSI test procedure to prevent this issue? Why or why not? NHTSA's test procedure states the SV BSI intervention shall not cause the SV to travel 0.3 m (1 ft.) or more beyond the inboard edge of the lane line separating the SV travel lane from the lane adjacent and to the right of it within the validity period. To assess whether this occurs, a second lane line is required (only one line is specified in the Euro NCAP LSS protocol for LKS testing). Does the introduction of a second lane line have the potential to confound LKS testing? Why or why not?

(12) Since most fatal road departure and opposite direction crashes occur at higher posted and known travel speeds, should the LKS test speed be increased, or does the current test speed adequately indicate performance at higher speeds, especially on straight roads? Why or why not?

(13) The Agency recognizes that the LKS test procedure currently contains many test conditions (*i.e.,* line type and departure direction). Is it necessary for the Agency to perform all test conditions to address the safety problem adequately, or could NCAP test only certain conditions to minimize test burden? For instance, should the Agency consider incorporating the test conditions for only one departure direction if the vehicle manufacturer provides test data to assure comparable system performance for the other direction? Or, should the Agency consider adopting only the most challenging test conditions? If so, which conditions are most appropriate? For instance, do the dashed line test conditions provide a greater challenge to vehicles than the solid line test conditions?

(14) What is the appropriate number of test trials to adopt for each LKS test condition, and why? Also, what is an appropriate pass rate for the LKS tests, and why?

(15) Are there any aspects of NCAP's current LDW or proposed LKS test procedure that need further refinement or clarification? Is so, what additional refinements or clarifications are necessary?

(16) Should all BSW testing be conducted without the turn signal indicator activated? Why or why not? If the Agency was to modify the BSW test procedure to stipulate activation of the turn signal indicator, should the test vehicle be required to provide an audible or haptic warning that another vehicle is in its blind zone, or is a visual warning sufficient? If a visual warning is sufficient, should it continually flash, at a minimum, to provide a distinction from the blind spot status when the turn signal is not in use? Why or why not?

(17) Is it appropriate for the Agency to use the Straight Lane Pass-by Test to quantify and ultimately differentiate a vehicle's BSW capability based on its ability to provide acceptable warnings when the POV has entered the SV's blind spot (as defined by the blind zone) for varying POV–SV speed differentials? Why or why not?

(18) Is using the GVT as the strikeable POV in the BSI test procedure appropriate? Is using Revision G in NCAP appropriate? Why or why not?

(19) The Agency recognizes that the BSW test procedure currently contains two test scenarios that have multiple test conditions (*e.g.,* test speeds and POV approach directions (left and right side of the SV)). Is it necessary for the Agency to perform all test scenarios and test conditions to address the real-world safety problem adequately, or could it test only certain scenarios or conditions to minimize test burden in NCAP? For instance, should the Agency consider incorporating only the most challenging test conditions into NCAP, such as the ones with the greatest speed differential, or choose to perform the test conditions having the lowest and highest speeds? Should the Agency consider only performing the test conditions where the POV passes by the SV on the left side if the vehicle manufacturer provides test data to assure the left side pass-by tests are also representative of system performance during right side pass-by tests? Why or why not?

(20) Given the Agency's concern about the amount of system performance testing under consideration in this RFC, it seeks input on whether to include a BSI false positive test. Is a false positive assessment needed to insure system robustness and high customer satisfaction? Why or why not?

(21) The BSW test procedure includes 7 repeated trials for each test condition (*i.e.,* test speed and POV approach direction). Is this an appropriate number of repeat trials? Why or why not? What is the appropriate number of test trials to adopt for each BSI test scenario, and why? Also, what is an appropriate pass rate for each of the two tests, BSW and BSI, and why is it appropriate?

(22) Is it reasonable to perform only BSI tests in conjunction with activation of the turn signal? Why or why not? If the turn signal is not used, how can the operation of BSI be differentiated from the heading adjustments resulting from an LKS intervention? Should the SV's LKS system be switched off during conduct of the Agency's BSI evaluations? Why or why not?

(23) Is the proposed test speed range, 10 kph (6.2 mph) to 60 kph (37.3 mph), to be assessed in 10 kph (6.2 mph) increments, most appropriate for PAEB test scenarios S1 and S4? Why or why not?

(24) The Agency has proposed to include Scenarios S1 a–e and S4 a–c in its NCAP assessment. Is it necessary for the Agency to perform all test scenarios and test conditions proposed in this RFC notice to address the safety problem adequately, or could NCAP test only certain scenarios or conditions to minimize test burden but still address an adequate proportion of the safety problem? Why or why not? If it is not necessary for the Agency to perform all test scenarios or test conditions, which scenarios/conditions should be assessed? Although they are not currently proposed for inclusion, should the Agency also adopt the false positive test conditions, S1f and S1g? Why or why not?

(25) Given that a large portion of pedestrian fatalities and injuries occur under dark lighting conditions, the Agency has proposed to perform testing for the included test conditions (*i.e.,* S1 a–e and S4 a–c) under dark lighting conditions (*i.e.,* nighttime) in addition to daylight test conditions for test speed range 10 kph (6.2 mph) to 60 kph (37.3 mph). NHTSA proposes that a vehicle's lower beams would provide the source of light during the nighttime assessments. However, if the SV is equipped with advanced lighting systems such as semiautomatic headlamp beam switching and/or adaptive driving beam head lighting system, they shall be enabled during the nighttime PAEB assessment. Is this testing approach appropriate? Why or why not? Should the Agency conduct PAEB evaluation tests with only the vehicle's lower beams and disable or not use any other advanced lighting systems?

(26) Should the Agency consider performing PAEB testing under dark conditions with a vehicle's upper beams as a light source? If yes, should this lighting condition be assessed in addition to the proposed dark test condition, which would utilize only a vehicle's lower beams along with any advanced lighting system enabled, or in lieu of the proposed dark testing condition? Should the Agency also evaluate PAEB performance in dark lighting conditions with overhead lights? Why or why not? What test scenarios, conditions, and speed(s) are appropriate for nighttime (*i.e.,* dark lighting conditions) testing in NCAP, and why?

(27) To reduce test burden in NCAP, the Agency proposed to perform one test per test speed until contact occurs, or until the vehicle's relative impact velocity exceeds 50 percent of the initial speed of the subject vehicle for the given test condition. If contact occurs and if the vehicle's relative impact velocity is less than or equal to 50 percent

of the initial SV speed for the given combination of test speed and test condition, an additional four test trials will be conducted at the given test speed and test condition, and the SV must meet the passing performance criterion (*i.e.,* no contact) for at least three out of those five test trials in order to be assessed at the next incremental test speed. Is this an appropriate approach to assess PAEB system performance in NCAP, or should a certain number of test trials be required for each assessed test speed? Why or why not? If a certain number of repeat tests is more appropriate, how many test trials should be conducted, and why?

(28) Is a performance criterion of ''no contact'' appropriate for the proposed PAEB test conditions? Why or why not? Alternatively, should the Agency require minimum speed reductions or specify a maximum allowable SV-to-mannequin impact speed for any or all of the proposed test conditions (*i.e.,* test scenario and test speed combination)? If yes, why, and for which test conditions? For those test conditions, what speed reductions would be appropriate? Alternatively, what maximum allowable impact speed would be appropriate?

(29) If the SV contacts the pedestrian mannequin during the initial trial for a given test condition and test speed combination, NHTSA proposes to conduct additional test trials only if the relative impact velocity observed during that trial is less than or equal to 50 percent of the initial speed of the SV. For a test speed of 60 kph (37.3 mph), this maximum relative impact velocity is nominally 30 kph (18.6 mph), and for a test speed of 10 kph (6.2 mph), the maximum relative impact velocity is nominally 5 kph (3.1 mph). Is this an appropriate limit on the maximum relative impact velocity for the proposed range of test speeds? If not, why? Note that the tests in Global Technical Regulation (GTR) No. 9 for pedestrian crashworthiness protection simulates a pedestrian impact at 40 kph (24.9 mph).

(30) For each lighting condition, the Agency is proposing 6 test speeds (*i.e.,* those performed from 10 to 60 kph (6.2 to 37.3 mph) in increments of 10 kph (6.2 mph)) for each of the 8 proposed test conditions (S1a, b, c, d, and e and S4a, b, and c). This results in a total of 48 unique combinations of test conditions and test speeds to be evaluated per lighting condition, or 96 total combinations for both light conditions. The Agency mentions later in the ADAS Ratings System section, that it plans to use check marks, as is done currently, to give credit to vehicles that (1) are equipped with the recommended ADAS technologies, and (2) pass the applicable system performance test requirements for each ADAS technology included in NCAP until it issues (1) a final decision notice announcing the new ADAS rating system and (2) a final rule to amend the safety rating section of the vehicle window sticker (Monroney label). For the purposes of providing credit for a technology using check marks, what is an appropriate minimum overall pass rate for PAEB performance evaluation? For example, should a vehicle be said to meet the PAEB performance requirements if it passes two-thirds of the 96 unique combinations of test conditions and test speeds for the two lighting conditions (*i.e.,* passes 64 unique combinations of test conditions and test speeds)?

(31) Given previous support from commenters to include S2 and S3 scenarios in the program at some point in the future and the results of AAA's testing for one of the turning conditions, NHTSA seeks comment on an appropriate timeframe for including S2 and S3 scenarios into the Agency's NCAP. Also, NHTSA requests from vehicle manufacturers information on any currently available models designed to address, and ideally achieve crash avoidance during conduct of the S2 and S3 scenarios to support Agency evaluation for a future program upgrade.

(32) Should the Agency adopt the articulated mannequins into the PAEB test procedure as proposed? Why or why not?

(33) In addition to tests performed under daylight conditions, the Agency is proposing to evaluate the performance of PAEB systems during nighttime conditions where a large percentage of real-world pedestrian fatalities occur. Are there other technologies and information available to the public that the Agency can evaluate under nighttime conditions?

(34) Are there other safety areas that NHTSA should consider as part of this or a future upgrade for pedestrian protection?

(35) Are there any aspects of NCAP's proposed PAEB test procedure that need further refinement or clarification before adoption? If so, what additional refinement or clarification is necessary, and why?

(36) Considering not only the increasing number of cyclists killed on U.S. roads but also the limitations of current AEB systems in detecting cyclists, the Agency seeks comment on the appropriate timeframe for adding a cyclist component to NCAP and requests from vehicle manufacturers information on any currently available models that have the capability to validate the cyclist target and test procedures used by Euro NCAP to support evaluation for a future NCAP program upgrade.

(37) In addition to the test procedures used by Euro NCAP, are there others that NHTSA should consider to address the cyclist crash population in the U.S. and effectiveness of systems?

(38) For the Agency's FCW tests:

—If the Agency retains one or more separate tests for FCW, should it award credit solely to vehicles equipped with FCW systems that provide a passing audible alert? Or, should it also consider awarding credit to vehicles equipped with FCW systems that provide passing haptic alerts? Are there certain haptic alert types that should be excluded from consideration (if the Agency was to award credit to vehicles with haptic alerts that pass NCAP tests) because they may be a nuisance to drivers such that they are more likely to disable the system? Do commenters believe that haptic alerts can be accurately and objectively assessed? Why or why not? Is it appropriate for the Agency to refrain from awarding credit to FCW systems that provide only a passing visual alert? Why or why not? If the Agency assesses the sufficiency of the FCW alert in the context of CIB (and PAEB) tests, what type of FCW alert(s) would be acceptable for use in defining the timing of the release of the SV accelerator pedal, and why?

—Is it most appropriate to test the middle (or next latest) FCW system setting in lieu of the default setting when performing FCW and AEB (including PAEB) NCAP tests on vehicles that offer multiple FCW timing adjustment settings? Why or why not? If not, what use setting would be most appropriate?

—Should the Agency consider consolidating FCW and CIB testing such that NCAP's CIB test scenarios would serve as an indicant of FCW operation? Why or why not? The Agency has proposed that if it combines the two tests, it would evaluate the presence of a vehicle's FCW system during its CIB tests by requiring the SV accelerator pedal be fully released within 500 ms after the FCW alert is issued. If no FCW alert is issued during a CIB test, the SV accelerator pedal will be fully released within 500 ms after the onset of CIB system braking (as defined by the instant SV deceleration reaches at least 0.5g). If no FCW alert is issued and the vehicle's CIB system does not offer any braking, release of the SV accelerator pedal will not be required prior to impact with the POV. The Agency notes that it has also proposed these test procedural changes for its PAEB tests as well. Is this assessment method for FCW operation reasonable? Why or why not?

—If the Agency continues to assess FCW systems separately from CIB, how should the current FCW performance criteria (*i.e.,* TTCs) be amended if the Agency aligns the corresponding maximum SV test speeds, POV speeds, SV-to-POV headway, POV deceleration magnitude, etc., as applicable, with the proposed CIB tests, and why? What assessment method should be used—one trial per scenario, or multiple trials, and why? If multiple trials should be required, how many would be appropriate, and why? Also, what would be an acceptable pass rate, and why?

—Is it desirable for NCAP to perform one FCW test scenario (instead of the three that are currently included in NCAP's FCW test procedure), conducted at the corresponding maximum SV test speed, POV speed, SV-to-POV headway (as applicable), POV deceleration magnitude, etc. of the proposed CIB test to serve as an indicant of FCW system performance? If so, which test scenario from NCAP's FCW test procedure is appropriate?

—Are there additional or alternative test scenarios or test conditions that the Agency should consider incorporating into the FCW test procedure, such as those at even higher test speeds than those proposed for the CIB tests, or those having increased complexity? If so, should the current FCW performance criteria (*i.e.,* TTCs) and/or test scenario specifications be amended, and to what extent?

(39) For the Agency's CIB tests:

—Are the SV and POV speeds, SV-to-POV headway, deceleration magnitude, etc. the Agency has proposed for NCAP's CIB tests

appropriate? Why or why not? If not, what speeds, headway(s), deceleration magnitude(s) are appropriate, and why? Should the Agency adopt a POV deceleration magnitude of 0.6 g for its LVD CIB test in lieu of 0.5 g proposed? Why or why not?

—Should the Agency consider adopting additional higher tests speeds (*i.e.,* 60, 70, and/or 80 kph (37.3, 43.5, and/or 49.7 mph)) for the CIB (and potentially DBS) LVD test scenario in NCAP? Why or why not? If additional speeds are included, what headway and deceleration magnitude would be appropriate for each additional test speed, and why?

—Is a performance criterion of ''no contact'' appropriate for the proposed CIB and DBS test conditions? Why or why not? Alternatively, should the Agency require minimum speed reductions or specify a maximum allowable SV-to-POV impact speed for any or all of the proposed test conditions (*i.e.,* test scenario and test speed combination)? If yes, why, and for which test conditions? For those test conditions, what speed reductions would be appropriate? Alternatively, what maximum allowable impact speed would be appropriate?

(40) For the Agency's DBS tests:

—Should the Agency remove the DBS test scenarios from NCAP? Why or why not? Alternatively, should the Agency conduct the DBS LVS and LVM tests at only the highest test speeds proposed for CIB—70 and 80 kph (43.5 and 49.7 mph)? Why or why not? If the Agency also adopted these higher tests speeds (70 and 80 kph (43.5 and 49.7 mph)) for the LVD CIB test, should it also conduct the LVD DBS test at these same speeds? Why or why not?

—If the Agency continues to perform DBS testing in NCAP, is it appropriate to revise when the manual (robotic) brake application is initiated to a time that corresponds to 1.0 second after the FCW alert is issued (regardless of whether a CIB activation occurs after the FCW alert but before initiation of the manual brake application)? If not, why, and what prescribed TTC values would be appropriate for the modified DBS test conditions?

(41) Is the assessment method NHTSA has proposed for the CIB and DBS tests (*i.e.,* one trial per test speed with speed increments of 10 kph (6.2 mph) for each test condition and repeat trials only in the event of POV contact) appropriate? Why or why not? Should an alternative assessment method such as multiple trials be required instead? If yes, why? If multiple trials should be required, how many would be appropriate, and why? Also, what would be an acceptable pass rate, and why? If the proposed assessment method is appropriate, it is acceptable even for the LVD test scenario if only one or two test speeds are selected for inclusion? Or, is it more appropriate to alternatively require 7 trials for each test speed, and require that 5 out of the 7 trials conducted pass the ''no contact'' performance criterion?

(42) The Agency's proposal to (1) consolidate its FCW and CIB tests such that the CIB tests would also serve as an indicant of FCW operation, (2) assess 14 test speeds for CIB (5 for LVS, 5 for LVM, and potentially 4 for LVD), and (3) assess 6 tests speeds for DBS (2 for LVS, 2 for LVM, and potentially 2 for LVD), would result in a total of 20 unique combinations of test conditions and test speeds to be evaluated for AEB. What is an appropriate minimum pass rate for AEB performance evaluation? For example, a vehicle is considered to meet the AEB performance if it passes two-thirds of the 20 unique combinations of test conditions and test speeds (*i.e.,* passes 14 unique combinations of test conditions and test speeds).

(43) As fused camera-radar forward-looking sensors are becoming more prevalent in the vehicle fleet, and the Agency has not observed any instances of false positive test failures during any of its CIB or DBS testing, is it appropriate to remove the false positive STP assessments from NCAP's AEB (*i.e.,* CIB and DBS) evaluation matrix in this NCAP update? Why or why not?

(44) For vehicles with regenerative braking that have setting options, the Agency is proposing to choose the ''off'' setting, or the setting that provides the lowest deceleration when the accelerator is fully released. As mentioned, this proposal also applies to the Agency's PAEB tests. Are the proposed settings appropriate? Why or why not? Will regenerative braking introduce additional complications for the Agency's AEB and PAEB testing, and how could the Agency best address them?

(45) Should NCAP adopt any additional AEB tests or alter its current tests to address the ''changing'' rear-end crash problem? If so, what tests should be added, or how should current tests be modified?

(46) Are there any aspects of NCAP's current FCW, CIB, and/or DBS test procedure(s) that need further refinement or clarification? If so, what refinements or clarifications are necessary, and why?

(47) Would a 250 ms overlap of SV throttle and brake pedal application be acceptable in instances where no FCW alert has been issued by the prescribed TTC in a DBS test, or where the FCW alert occurs very close to the brake activation. If a 250 ms overlap is not acceptable, what overlap would be acceptable?

(48) Should the Agency pursue research in the future to assess AEB system performance under less than ideal environmental conditions? If so, what environmental conditions would be appropriate?

(49) The Agency requests comment on the use of the GVT in lieu of the SSV in future AEB NCAP testing,

(50) The Agency requests comment on whether Revisions F and G should be considered equivalent for AEB testing.

(51) The Agency requests comment on whether NHTSA should adopt a revision of the GVT other than Revision G for use in AEB testing in NCAP.

IV. ADAS Rating System

With regard to a future ADAS rating system, the Agency seeks comments on the following:

(52) The components and development of a full-scale ADAS rating system,

(53) the aforementioned approaches as well as others deemed appropriate for the development of a future ADAS rating system in order to assist the Agency in developing future proposals,

(54) the appropriateness of using target populations and technology effectiveness estimates to determine weights or proportions to assign to individual test conditions, corresponding test combinations, or an overall ADAS award,

(55) the use of a baseline concept to convey ADAS scores/ratings,

(56) how best to translate points/ratings earned during ADAS testing conducted under NCAP to a reduction in crashes, injuries, deaths, etc., including which real-world data metric would be most appropriate,

(57) whether an overall rating system is necessary and, if so, whether it should replace or simply supplement the existing list approach, and

(58) effective communication of ADAS ratings, including the appropriateness of using a points-based ADAS rating system in lieu of, or in addition to, a star rating system.

VI. Establishing a Roadmap for NCAP

With regard to a roadmap, NHTSA requests feedback on the following:

(59) Identification of safety opportunities or technologies in development that could be included in future roadmaps,

(60) opportunities to benefit from collaboration or harmonization with other rating programs, and

(61) other issues to assist with long-term planning.

VII. Adding Emerging Vehicle Technologies for Safe Driving Choices

(62) What are the capabilities of the various available approaches to driver monitoring systems (*e.g.,* steering wheel sensors, eye tracking cameras, etc.) to detect or infer different driver state measurement or estimations (*e.g.,* visual attention, drowsiness, medical incapacity, etc.)? What is the associated confidence or reliability in detecting or inferring such driver states and what supporting data exist?

(63) Of further interest are the types of system actions taken based on a driver monitoring system's estimate of a driver's state. What are the types and modes of associated warnings, interventions, and other mitigation strategies that are most effective for different driver states or impairments (*e.g.,* drowsy, medical, distraction)? What research data exist that substantiate effectiveness of these interventions?

(64) Are there relevant thresholds and strategies for performance (*e.g.,* alert versus some degree of intervention) that would warrant some type of NCAP credit?

(65) Since different driver states (*e.g.,* visual distraction and intoxication) can result in similar driving behaviors (*e.g.,* wide within-lane position variability), comments regarding opportunities and tradeoffs in mitigation strategies when the originating cause is not conclusive are of specific interest.

(66) What types of consumer acceptance information (*e.g.,* consumer interest or

feedback data) are available or are foreseen for implementation of different types of driver monitoring systems and associated mitigation strategies for driver impairment, drowsiness, or visual inattention? Are there privacy concerns? What are the related privacy protection strategies? Are there use or preference data on a selectable feature that could be optionally enabled by consumers (*e.g.,* for teen drivers by their parents)?

(67) What in-vehicle and HMI design characteristics would be most helpful to include in an NCAP rating that focuses on ease of use? What research data exist to support objectively characterizing ease of use for vehicle controls and displays?

(68) What are specific countermeasures or approaches to mitigate driver distraction, and what are the associated effectiveness metrics that may be feasible and appropriate for inclusion in the NCAP program? Methods may include driver monitoring and action strategies, HMI design considerations, expanded in-motion secondary task lockouts, phone application/notification limitations while paired with the vehicle, etc.

(69) What distraction mitigation measures could be considered for NCAP credit?

(70) Are there opportunities for including alcohol-impairment technology in NCAP? What types of metrics, thresholds, and tests could be considered? Could voluntary deployment or adoption be positively influenced through NCAP credit?

(71) How can NCAP procedures be described in objective terms that could be inclusive of various approaches, such as detection systems and inference systems? Are there particular challenges with any approach that may need special considerations? What supporting research data exist that document relevant performance factors such as sensing accuracy and detection algorithm efficacy?

(72) When a system detects alcohol-impairment during the course of a trip, what actions could the system take in a safe manner? What are the safety considerations related to various options that manufacturers may be considering (*e.g.,* speed reduction, performing a safe stop, pulling over, or flasher activation)? How should various actions be considered for NCAP credit?

(73) What is known related to consumer acceptance of alcohol-impaired driving detection and mitigation functions, and how may that differ with respect to direct measurement approaches versus estimation techniques using a driver monitoring system? What consumer interest or feedback data exist relating to this topic? Are there privacy concerns or privacy protection strategies with various approaches? What are the related privacy protection strategies?

(74) Should NCAP consider credit for a seat belt reminder system with a continuous or intermittent audible signal that does not cease until the seat belt is properly buckled (*i.e.,* after the 60 second FMVSS No. 208 minimum)? What data are available to support associated effectiveness? Are certain audible signal characteristics more effective than others?

(75) Is there an opportunity for including a seat belt interlock assessment in NCAP?

(76) If the Agency were to encourage seat belt interlock adoption through NCAP, should all interlock system approaches be considered, or only certain types? If so, which ones? What metrics could be evaluated for each? Should differing credit be applied depending upon interlock system approach?

(77) Should seat belt interlocks be considered for all seating positions in the vehicle, or only the front seats? Could there be an opportunity for differentiation in this respect?

(78) What information is known or anticipated with respect to consumer acceptance of seat belt interlock systems and/or persistent seat belt reminder systems in vehicles? What consumer interest or feedback data exist on this topic?

(79) Could there be an NCAP opportunity in a selectable feature that could be optionally engaged such as in the context of a ''teen mode'' feature?

(80) Should NHTSA take into consideration systems, such as intelligent speed assist systems, which determine current speed limits and warn the driver or adjust the maximum traveling speed accordingly? Should there be a differentiation between warning and intervention type intelligent speed assist systems in this consideration? Should systems that allow for some small amount of speeding over the limit before intervening be treated the same or differently than systems that are specifically keyed to a road's speed limit? What about for systems that allow driver override versus systems that do not?

(81) Are there specific protocols that should be considered when evaluating speed assist system functionality?

(82) What information is known or anticipated with respect to consumer acceptance of intelligent speed assist systems? What consumer interest or feedback data exist on this topic?

(83) Are there other means that the Agency should consider to prevent excessive speeding?

(84) If NHTSA considers this technology for inclusion in NCAP, are door logic solutions sufficient? Should NHTSA only consider systems that detect the presence of a child?

(85) What research data exist to substantiate differences in effectiveness of these system types?

(86) Are there specific protocols that should be considered when evaluating these in-vehicle rear seat child reminder systems?

(87) What information is known or anticipated with respect to consumer acceptance of integrated rear seat child reminder systems in vehicles? What consumer interest or feedback data exist on this topic?

VIII. Revising the 5-Star Safety Rating System

(88) What approaches are most effective to provide consumers with vehicle safety ratings that provide meaningful information and discriminate performance of vehicles among the fleet?

(89) Is the use of additional injury criteria/body regions that are not part of the existing 5-star ratings system appropriate for use in a points-based calculation of future star ratings? Some injury criteria do not have associated risk curves. Are these regions appropriate to include, and if so, what is the appropriate method by which to include them?

(90) Should a crashworthiness 5-star safety ratings system continue to measure a vehicle's performance based on a known or expected fleet average performer, or should it return to an absolute system of rating vehicles?

(91) Considering the basic structure of the current ratings system (combined injury risk), the potential overlapping target populations for crashworthiness and ADAS program elements, as well as other potential concepts mentioned in this document such as a points-based system, what would the best method of calculating the vehicle fleet average performance be?

(92) Should the vehicle fleet average performance be updated at regular intervals, and if so, how often?

(93) What is the most appropriate way to disseminate these updates or changes to the public?

(94) Should the Agency disseminate its 5-star ratings with half-star increments?

(95) Should the Agency assign star ratings using a decimal format in addition to or in place of whole- or half-stars?

(96) Should the Agency continue to include rollover resistance evaluations in its future overall ratings?

IX. Other Activities

(97) Considering the Agency's goal of maintaining the integrity of the program, should NHTSA accept self-reported test data that is generated by test laboratories that are not NHTSA's contracted test laboratories? If no, why not? If yes, what criteria are most relevant for evaluating whether a given laboratory can acceptably conduct ADAS performance tests for NCAP such that the program's credibility is upheld?

(98) As the ADAS assessment program in NCAP continues to grow in the future to include new ADAS technologies and more complex test procedures, what other means would best address the following program challenges: Methods of data collection, maintaining data integrity and public trust, and managing test failures, particularly during verification testing?

(99) What is the potential for consumer confusion if information on the Monroney label and on the website differs, and how can this confusion be lessened?

(100) What types of vehicles do consumers compare during their search for a new vehicle? Do consumers often consider vehicles with different body styles (*e.g.,* midsized sedan versus large sport utility)?

(101) When searching for vehicle safety information, do consumers have a clear understanding for which vehicles they are seeking information, or do they browse through vehicle ratings to identify vehicles they may wish to purchase?

(102) When classifying vehicles by body style, what degree of classification is most appropriate? For example, when purchasing a passenger vehicle, do consumers consider all passenger vehicles, or are they inclined to narrow their searches to vehicles of a subset

of passenger vehicles (*e.g.,* subcompact passenger vehicle)?

(103) Within the context of the updates considered in this notice, what is the most important top-level safety-related information that consumers should be able to compare amongst vehicles? Which of these pieces of information should consumers be able to use to sort and filter search results?

Appendix C. History of Relevant Events and Documents Pertaining to This Notice

A. April 5, 2013 Request for Comments

On April 5, 2013, NHTSA published an RFC notice [261] asking the public to ''help identify the potential areas of study for improvement to the program that have the greatest potential for producing safety benefits.'' Specifically, NHTSA requested comments on areas in which the Agency believed enhancements to NCAP could be made either in the short term or over a longer period of time. Several ADAS applications were discussed for possible future inclusion in the crash avoidance program in NCAP, including blind spot warning, lane keeping assistance, crash imminent braking, dynamic brake support, and pedestrian detection and intervention systems.

A total of 68 organizations or individuals submitted comments in response to the April 2013 notice. The comments received from stakeholders, though generally supportive of making improvements to NCAP's crash avoidance program by including assessment of additional ADAS technologies, exhibited disagreement about how and when a particular technology should be added to the program. Specifically, these disagreements included the conditions under which these technologies should be incorporated into NCAP.

Generally, most commenters supported the assessment of ADAS technologies, such as CIB, DBS, and rearward pedestrian detection, in NCAP. There was also support from commenters on the addition of pedestrian safety assessment in NCAP. However, opinions varied regarding whether an active and/or passive pedestrian safety program should be included in NCAP. Moreover, consumer demand for blind spot warning technology resulted in many commenters recommending the technology for inclusion in NCAP.

Many commenters encouraged NHTSA to ensure that any program area considered for inclusion in NCAP should have the necessary supporting data (*e.g.,* safety benefits) and address a safety need. Furthermore, many commenters (including both vehicle manufacturers and safety advocate groups) asked the Agency to also consider a regulatory, as well as a non-regulatory (NCAP) approach, for any vehicle safety improvements—especially regarding the introduction of new advanced crash test dummies. Vehicle manufacturers requested that the Agency consider providing sufficient lead time for implementation of any program update. Lastly, many commenters recommended harmonizing test procedures, test requirements, test devices, and the like with other government agencies and standards development organizations, such as the International Organization for Standardization (ISO), SAE International (SAE), and other consumer information programs worldwide.

B. January 28, 2015 Request for Comment and November 5, 2015 Final Decision

On January 28, 2015, in response to favorable feedback received on crash imminent braking (CIB) and dynamic brake support (DBS) through the 2013 RFC, NHTSA published an RFC proposing to add these technologies to NCAP.[262] On November 5, 2015, NHTSA issued the final decision to include these technologies, which became effective for model year 2018 vehicles.[263]

C. December 4, 2015 Fixing America's Surface Transportation Act

On December 4, 2015, the President signed the Fixing America's Surface Transportation (FAST) Act, which included a section that requires NHTSA to promulgate a rule to ensure crash avoidance information is displayed along with crashworthiness information on window stickers placed on motor vehicles by their manufacturers.[264] At the time the FAST Act was enacted, NHTSA was already in the process of developing an RFC notice to present many proposed updates to NCAP, including the evaluation of several new ADAS and a corresponding update of the Monroney label.

D. December 16, 2015 Request for Comments

On December 16, 2015, NHTSA published a broad RFC notice seeking comment on using enhanced tools and techniques for evaluating the safety of vehicles, generating star ratings, and stimulating further vehicle safety developments.[265] On the crashworthiness front, the RFC sought comment on establishment of a new frontal oblique test and use of the more advanced crash test dummies in all tests. The RFC also sought comment on creation of a new crash avoidance rating category and included nine advanced crash avoidance technologies. Additionally, the RFC sought comment on creation of a new pedestrian protection rating category involving the use of adult and child head, upper leg, and lower leg impact tests and two new pedestrian crash avoidance technologies. The RFC sought comment on combining the three categories into one overall 5-star rating.

In response to the notice, NHTSA received more than 300 comments, more than 200 of which were from individuals supporting comments made by the League of American Bicyclists. More than 30 individuals filed comments addressing a specific program area or several topics in the RFC.

The Agency also received responses to the notice at two public hearings, one in Detroit, Michigan, on January 14, 2016, and the second at the U.S. DOT Headquarters in Washington, DC, on January 29, 2016. By request, NHTSA also held several meetings with stakeholders.[266]

In response to the notice, commenters raised many issues involving both supporting data for the proposed changes and procedural concerns. Commenters stated that the public comment period was inadequate for purposes of responding because of the complexity of the program described in the RFC, and claimed that the technical information supporting the notice was not sufficient to allow a full understanding of the contemplated changes. According to the commenters, this hindered their ability to prepare substantive comments in response to the notice. In addition, most vehicle manufacturers stated that the significant cost burden associated with fitment of the proposed new technologies and the inclusion of a new crash test and new test dummies would increase the price of new vehicles. Manufacturers also noted that the advanced crash test dummies described in the RFC were not yet standardized and needed additional work. Manufacturers, along with safety advocates, further expressed the need for data demonstrating that each proposed program change would provide sufficient safety improvement to warrant its inclusion in NCAP. In addition, several commenters suggested that NHTSA develop near-term and long-term roadmaps for NCAP and revise NCAP in a more gradual, ''phased'' approach.[267]

E. October 1, 2018 Public Meeting

In response to the issues raised by those who commented on the December 2015 notice and in light of the FAST Act mandate [268] NHTSA issued a notice announcing its plan to host a public meeting to re-engage stakeholders and seek up-to-date input to help the Agency plan the future of NCAP. Interested parties were also able to submit written comments to the docket.[269]

Thirty-five parties participated in the public meeting, 32 of which submitted written comments to the docket. Additional written comments were submitted by others who did not attend the public meeting. These commenters included: Automobile manufacturers, consumer organizations, suppliers, industry associations, academia, individuals, and other organizations. A large

[261] 78 FR 20597 (Apr. 5, 2013).

[262] 80 FR 4630 (Jan. 28, 2015).

[263] 80 FR 68604 (Nov. 5, 2015).

[264] Section 24321 of the FAST Act, otherwise known as the ''Safety Through Informed Consumers Act of 2015.''

[265] 80 FR 78521 (Dec. 16, 2015).

[266] See *www.regulations.gov,* Docket No. NHTSA–2015–0119 for a full listing of the commenters and the comments they submitted, as well as records of the public hearings and smaller meetings relating to the RFC that occurred.

[267] For example, one commenter, the Alliance of Automobile Manufacturers, recommended ''that NHTSA revise NCAP in phases to maintain a data-driven, science-based foundation for the program by, in part, completing the standardization, federalization, and docketing of all ATDs and test fixtures to be used in NCAP.''

[268] Section 24322 ''Passenger Motor Vehicle Information'' of this Act requires the Secretary of the Department of Transportation to issue a rule no later than 1 year after the enactment of this Act ''to ensure that crash avoidance information is indicated next to crashworthiness information on stickers placed on motor vehicles by their manufacturers.''

[269] *https://www.regulations.gov,* Docket No. NHTSA–2018–0055.

number of individuals submitted comments requesting that NCAP account for pedestrians and bicyclists in its rating system, as members of the League of American Bicyclists.

Many commenters said an update to NCAP was taking too long. The prominent theme from the commenters included the request for an NCAP roadmap that lays out planned changes to the program and details when those changes are likely to occur. Some commenters pointed to the roadmaps of Euro NCAP. In addition, many of the comments focused on ADAS and the need for NCAP to stimulate further the incorporation of these technologies on vehicles. While supporting an overall rating, many commenters stated that the individual ratings for the crashworthiness and ADAS programs should be part of the new ratings system and be made available to consumers. Automaker commenters suggested that any changes to NCAP should allow adequate time for manufacturers to incorporate vehicle design changes in response to NCAP updates. Some commenters suggested that a vehicle's attributes and status following a crash (*e.g.,* notifying appropriate authorities) should be part of NCAP ratings as well.

Several commenters said changes to NCAP should be supported by sound science and data and address the safety problem with potential effectiveness of any countermeasure being rated. Some commenters also suggested that NCAP's promotion of ADAS technologies will lay the groundwork for automated driving systems (ADS). Several commenters suggested that there should be as much harmonization as possible with related global vehicle rating programs to minimize the cost and testing burden on vehicle manufacturers. Most commenters supported the idea that NHTSA continue to accept manufacturer-conducted, self-reported test results as evidence that the vehicles are equipped with one or more NCAP-recommended technologies (*i.e.,* that the Agency does not need to verify that the ADAS meet the NCAP system performance requirements).

Some commenters noted that NHTSA has yet to implement the requirement of the 2015 FAST Act to provide crash avoidance information on the Monroney label. Those who commented on this issue generally supported moving forward and completing this as soon as possible. A few additional commenters addressed the issue of possible new crash test dummies used in NCAP, but indicated that any new dummies should be ''Federalized'' by adding the dummies into 49 CFR part 572, ''Anthropomorphic test devices,'' before incorporating them into NCAP.

Regarding the dissemination and promotion of NCAP's vehicle safety information, some of the commenters urged the expanded use of new media and other technological approaches to communicating NCAP vehicle safety information. Others recommended that there should be traditional public information ''campaigns'' to make the public more aware of NCAP. Commenters requested a more robust search capability on NHTSA's website, particularly to facilitate consumer comparisons of vehicles within a class.

Among those addressing the utility and effectiveness of the 5-star ratings system, all supported the continued use of star ratings with some suggesting that the use of half-star increments would be a way to introduce more differentiation between vehicles and provide an incentive for manufacturers to improve vehicle safety in situations where doing so would result in an additional half star. One commenter suggested a 10-star rating system.

Comments were split on the question of whether new crash tests should be added to NCAP. Some supported adjusting the baseline injury risks associated with crashworthiness ratings. One commenter stated that NCAP should not pursue differentiation just for the sake of differentiation, instead suggesting that the highest priority should be to examine the correlation and validity of the current star rating system with real-world injury data. Several commenters suggested that there be a silver star rating as part of NCAP that would highlight safety aspects of vehicles that are of importance to older drivers. Others who commented on providing vehicle safety information for specific demographic groups either opposed the idea of information directed at demographic groups, expressed concerns, or said additional research is needed.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Steven S. Cliff,

Deputy Administrator.

[FR Doc. 2022–04894 Filed 3–8–22; 8:45 am]

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Part IV

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, et al.
Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 270, 274, 275, and 279

[Release Nos. 33–11028; 34–94197; IA–5956; IC–34497; File No. S7–04–22]

RIN 3235–AN08

Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing new rules under the Investment Advisers Act of 1940 (''Advisers Act'') and the Investment Company Act of 1940 (''Investment Company Act'') to require registered investment advisers (''advisers'') and investment companies (''funds'') to adopt and implement written cybersecurity policies and procedures reasonably designed to address cybersecurity risks. The Commission also is proposing a new rule and form under the Advisers Act to require advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission. With respect to disclosure, the Commission is proposing amendments to various forms regarding the disclosure related to significant cybersecurity risks and cybersecurity incidents that affect advisers and funds and their clients and shareholders. Finally, we are proposing new recordkeeping requirements under the Advisers Act and Investment Company Act.

DATES: Comments should be received on or before April 11, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–04–22 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–04–22. The 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 of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Juliet Han, Senior Counsel; Thomas Strumpf, Senior Counsel; Christopher Staley, Branch Chief; or Melissa Gainor, Assistant Director, at (202) 551–6787, Investment Adviser Regulation Office, Division of Investment Management, (202) 551–6787 or *IArules@sec.gov;* Y. Rachel Kuo, Senior Counsel; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, Investment Company Regulation Office, Division of Investment Management, (202) 551–6792 or *IM-Rules@sec.gov;* David Joire, Senior Special Counsel, at (202) 551–6825, Chief Counsel's Office, Division of Investment Management, (202) 551–6825 or *IMOCC@sec.gov,* Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for public comment 17 CFR 275.206(4)–9 (''proposed rule 206(4)–9'') and 17 CFR 275.204–6 (''proposed rule 204–6'') under the Advisers Act [15 U.S.C. 80b–1 *et seq.*]; 17 CFR 270.38a–2 (''proposed rule 38a–2'') under the Investment Company Act [15 U.S.C. 80a–1 *et seq.*]; and new Form ADV–C [referenced in 17 CFR 279.7] under the Advisers Act; amendments to 17 CFR 275.204–2 (''rule 204–2'') and 17 CFR 275.204–3 (''rule 204–3'') under the Advisers Act; amendments to Form ADV [referenced in 17 CFR 279.1] under the Advisers Act; amendments to Form N–1A [referenced in 17 CFR 274.11A], Form N–2 [referenced in 17 CFR 274.11a–1], Form N–3 [referenced in 17 CFR 274.11b, Form N–4 [referenced in 17 CFR 274.11c], Form N–6 [referenced in 17 CFR 274.11d], Form N–8B–2 [referenced in 17 CFR 274.12], and Form S–6 [referenced in 17 CFR 239.16] under the Investment Company Act and the Securities Act of 1933 (''Securities Act'') [15 U.S.C. 77a *et seq.*]; amendments to 17 CFR 232.11 (''rule 11 of Regulation S–T'') and 17 CFR 232.405 (''rule 405 of Regulation S–T'') under the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78a *et seq.*]; amendments to 17 CFR 230.485 (''rule 485'') under the Securities Act; and amendments to 17 CFR 230.497 (''rule 497'') under the Securities Act.[1]

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[1] Unless otherwise noted, when we refer to the Investment Company Act, we are referring to 15 U.S.C. 80a, and when we refer to rules under the Investment Company Act, we are referring to title 17, part 270 of the Code of Federal Regulations [17 CFR 270]. In addition, unless otherwise noted, when we refer to the Advisers Act, we are referring to 15 U.S.C. 80b, and when we refer to rules under the Advisers Act, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR 275].

I. Introduction

A. Adviser and Fund Cybersecurity Risks

Advisers and funds play an important role in our financial markets and increasingly depend on technology for critical business operations.[2] Advisers and funds are exposed to, and rely on, a broad array of interconnected systems and networks, both directly and through service providers such as custodians, brokers, dealers, pricing services, and other technology vendors. Advisers also increasingly use digital engagement tools and other technology to engage with clients and develop and provide investment advice.[3] As a result, they face numerous cybersecurity risks and may experience cybersecurity incidents that can cause, or be exacerbated by, critical system or process failures.[4]

At the same time, cyber threat actors have grown more sophisticated and may target advisers and funds, putting them at risk of suffering significant financial, operational, legal, and reputational harm.[5] Cybersecurity incidents affecting advisers and funds also can cause substantial harm to their clients and investors. For example, cybersecurity incidents caused by malicious software (also known as malware) can cause the loss of adviser, fund, or client data. Cybersecurity incidents can prevent an adviser or fund from executing its investment strategy or an adviser, fund, client, or investor from accessing an account, which can lead to financial losses for clients or investors. In addition, cybersecurity incidents can lead to the theft of intellectual property, confidential or proprietary information, or client assets.

An adviser or a fund may incur substantial remediation costs due to a cybersecurity incident.[6] It may need to reimburse clients for cybersecurity-related losses as well as implement expensive organizational or technological changes to reinforce its ability to respond to and recover from a cybersecurity incident. It may also see an increase in its insurance premiums. In addition, an adviser or fund may face increased litigation, regulatory, or other legal and financial risks or suffer reputational damage, and any of these outcomes could cause its clients or investors to lose confidence in their adviser or fund, or the financial markets more generally. Cybersecurity risk management is therefore a critical area of focus for advisers and funds, and many advisers and funds have taken steps to address cybersecurity risks.

The Commission and its staff have and continue to focus on cybersecurity risks to advisers and their clients, and funds and their investors.[7] We are concerned about the efficacy of adviser and fund practices industry-wide to address cybersecurity risks and incidents, and that less robust practices may not address investor protection concerns. We are also concerned about the effectiveness of disclosures to advisory clients and fund shareholders concerning cybersecurity risks and incidents. The staff has observed a number of practices with respect to firms addressing cybersecurity risk and has provided its observations on a number of occasions to assist firms in enhancing their cybersecurity preparedness.[8] Despite these efforts and in the face of ever-increasing cybersecurity risk, staff continues to observe that certain advisers and funds show a lack of cybersecurity preparedness, which puts clients and investors at risk. We believe that clients and investors would be better protected if advisers and funds were required to have policies and procedures that include specific elements to address cybersecurity risks.

[2] Unless otherwise noted, the term ''fund'' means a registered investment company or a closed-end company that has elected to be treated as a business development company under the Investment Company Act (''BDC'').

[3] Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology to Develop and Provide Investment Advice, Investment Advisers Act Release No. 5833 (Aug. 27, 2021) [86 FR 49067 (Sept. 1, 2021)].

[4] *See, e.g.,* Financial Services Information Sharing and Analysis Center, Navigating Cyber 2021 (Mar. 2021), *available at https://www.fsisac.com/navigatingcyber2021-report* (detailing cyber threats that emerged in 2020 and predictions for 2021).

[5] *See, e.g.,* Federal Bureau of Investigation, *2020 Internet Crime Report* (Mar. 17, 2021), at 5, *available at https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3Report.pdf* (''FBI 2020 Internet Crime Report'') (noting the FBI's Internet Crime Complaint Center received more than 791,790 complaints in 2020); *see also* SEC, Office of Compliance, Inspections and Examinations (''OCIE'') (as of December 17, 2020, OCIE was renamed the Division of Examinations (''EXAMS''); SEC, EXAMS Risk Alert, Cybersecurity: Ransomware Alert (July 10, 2020), *available at https://www.sec.gov/files/Risk%20Alert%20-%20Ransomware.pdf* (''EXAMS Ransomware Risk Alert'') (observing an apparent increase in sophistication of ransomware attacks on SEC registrants); SEC, EXAMS Risk Alert, Cybersecurity: Safeguarding Client Accounts against Credential Compromise (Sept. 15, 2020), *available at https://www.sec.gov/files/Risk%20Alert%20-%20Credential%20Compromise.pdf* (''EXAMS Credential Stuffing Risk Alert''). Any staff statements represent the views of the staff. They are not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved their content. These staff statements, like all staff statements, have no legal force or effect: They do not alter or amend applicable law; and they create no new or additional obligations for any person.

[6] *See, e.g.,* Ponemon Institute and IBM Security, *Cost of Data Breach Report 2021* (July 2021), *available at https://www.ibm.com/security/data-breach* (''Cost of Data Breach Report'') (noting the average cost of a data breach in the financial industry in the United States is $5.72 million); FBI 2020 Internet Crime Report, *supra* footnote 5, at 15 (noting that cybercrime victims lost approximately $4.2 billion in 2020).

[7] *See, e.g.,* Division of Investment Management Cybersecurity Guidance, IM Guidance Update No. 2015–02 (Apr. 2015), *available at https://www.sec.gov/investment/im-guidance-2015-02.pdf;* Division of Investment Management, Business Continuity Planning for Registered Investment Companies, IM Guidance Update No. 2016–04 (June 2016), *available at https://www.sec.gov/investment/im-guidance-2016-04.pdf.*

[8] *See, e.g.,* SEC, EXAMS, Cybersecurity and Resiliency Observations (Jan. 27, 2020), *available at https://www.sec.gov/files/OCIE%20Cybersecurity%20and%20Resiliency%20Observations.pdf* (''EXAMS Cybersecurity and Resiliency Observations''); EXAMS Cybersecurity Initiative (Apr. 15, 2014), *available at https://www.sec.gov/ocie/announcement/Cybersecurity-Risk-Alert--Appendix---4.15.14.pdf;* EXAMS' 2015 Cybersecurity Examination Initiative (Sept. 15, 2015), *available at https://www.sec.gov/files/ocie-2015-cybersecurity-examination-initiative.pdf.*

Moreover, the staff has observed that while many advisers and funds already provide disclosure about cybersecurity risks, we are concerned that clients and investors may not be receiving sufficient cybersecurity-related information, particularly with respect to cybersecurity incidents, to assess the operational risk at a firm or the effects of an incident to help ensure they are making informed investment decisions. We therefore seek to improve cybersecurity-related disclosures by addressing cybersecurity more directly.

Finally, we believe that, in the face of ever-increasing cybersecurity risk, advisers and funds should report certain cybersecurity incidents to the Commission to assist in its oversight role. As further discussed below, this would allow the Commission and its staff to understand better the nature and extent of cybersecurity incidents occurring at advisers and funds, how firms respond to such incidents to protect clients and investors, and how cybersecurity incidents affect the financial markets more generally. We believe requiring advisers and funds to report the occurrence of significant cybersecurity incidents would bolster the efficiency and effectiveness of our efforts to protect investors, other market participants, and the financial markets in connection with cybersecurity incidents. Accordingly, we are proposing a set of comprehensive reforms to address cybersecurity risks for advisers and funds, enhance disclosure of information regarding cybersecurity risks and significant cybersecurity incidents, and require the reporting of significant cybersecurity incidents to the Commission.

B. Current Legal and Regulatory Framework

As fiduciaries, advisers are required to act in the best interest of their clients at all times.[9] Advisers owe their clients a duty of care and a duty of loyalty. An adviser's fiduciary obligation to its clients includes the obligation to take steps to protect client interests from being placed at risk because of the adviser's inability to provide advisory services.[10] These include steps to minimize operational and other risks that could lead to significant business disruptions or a loss or misuse of client information. Under this framework, advisers today consider a number of rules and regulations, which indirectly address cybersecurity. As discussed above, cybersecurity incidents can lead to significant business disruptions, including lapses in communication or the inability to place trades. In addition, these disruptions can lead to the loss of access to accounts or investments, potentially resulting in the loss or theft of data or assets. Thus, advisers should take steps to minimize cybersecurity risks in accordance with their fiduciary obligations.

Additionally, 17 CFR 275.206(4)–7 (''Advisers Act compliance rule'') requires advisers to consider their fiduciary and regulatory obligations and formalize policies and procedures reasonably designed to address them.[11] While the Advisers Act compliance rule does not enumerate specific elements that an adviser must include in its compliance program, an adviser generally should first identify conflicts of interest and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular operations and then design policies and procedures that address those risks.[12] Because cybersecurity incidents could create significant operational disruptions and losses to clients and investors, we understand that advisers often consider the cybersecurity risks created by their particular circumstances when developing their compliance policies and procedures under the Advisers Act compliance rule and tailor their policies and procedures to address those risks.

Similarly, 17 CFR 270.38a–1 (''Investment Company compliance rule'') requires funds to adopt and implement written policies and procedures reasonably designed to prevent violations of the Federal securities laws by the fund, including policies and procedures that provide for the oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund (''named service providers'').[13] We understand that funds take into account the specific risks they face, often including any specific cybersecurity risks, when developing their compliance policies and procedures under the Investment Company compliance rule.

Other Commission rules require advisers and funds to consider cybersecurity. For example, advisers and funds subject to 17 CFR 248.1 through 248.31 (''Regulation S–P'') are required to, among other things, adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information.[14] These written policies and procedures must be reasonably designed to protect the security and confidentiality of customer records and information. They must also be reasonably designed to protect against any anticipated threats or hazards, unauthorized access to, or use of customer records or information that could result in substantial harm or inconvenience to any customer.[15]

Moreover, advisers and funds subject to 17 CFR 248.201 through 202 (''Regulation S–ID'') must develop and implement a written identity theft program.[16] A Regulation S–ID program must include reasonable policies and procedures to identify and detect relevant red flags, as well as respond appropriately to red flags so as to prevent and mitigate identity theft.

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[9] *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963); *see also* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)], at 6–8.

[10] *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)], at n.22 (''Compliance Program Release'') (noting this fiduciary obligation in the context of business continuity plans).

[11] The Advisers Act compliance rule requires an adviser that is registered, or required to be registered, with the Commission to: (1) Adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act by the adviser and its supervised persons; (2) designate a chief compliance officer (''CCO'') responsible for administering the policies and procedures; and (3) review the adequacy of the policies and procedures and the effectiveness of their implementation at least annually.

[12] *See* Compliance Program Release, *supra* footnote 10, at n.22 and accompanying text. The Commission included business continuity, safeguards for the privacy of client records and information, as well as the accuracy of disclosures made to investors, clients and regulators in a list of general areas it believes, at a minimum, an adviser's compliance program should address to the extent they are relevant to the adviser. *Id.*

[13] The Investment Company compliance rule also requires the fund to: (1) Designate a CCO responsible for administering the policies and procedures, subject to certain requirements, including providing the fund's board with an annual report; and (2) review the adequacy of the policies and procedures and the effectiveness of their implementation at least annually.

[14] *See* Privacy of Consumer Financial Information (Regulation S–P), Investment Advisers Act Release No. 1883 (June 22, 2000) [65 FR 40334 (June 29, 2000)] (''Regulation S–P Release''); *see also* Disposal of Consumer Report Information, Investment Advisers Act Release No. 2332 (Dec. 2, 2004) [69 FR 71322 (Dec. 8, 2004)] (''Disposal of Consumer Report Information Release'') (requiring written policies and procedures under Regulation S–P); Compliance Program Release, *supra* footnote 10, at n.21 and accompanying text (stating expectation that policies and procedures would address safeguards for the privacy protection of client records and information and noting the applicability of Regulation S–P).

[15] 17 CFR 248.30. Regulation S–P also establishes general requirements and restrictions on, as well as exceptions to, the ability of financial institutions to disclose nonpublic personal information about customers to nonaffiliated third parties.

[16] *See* Identity Theft Red Flags Rules, Investment Advisers Act Release No. 3582 (Apr. 10, 2013) [78 FR 23638 (Apr. 19, 2013)] (''Identity Theft Release'').

Regulation S–ID programs must also be reviewed periodically to ensure that changes in the identity theft risk landscape are reflected and provide for the continued administration of the program, including staff training and appropriate and effective oversight of service providers.[17] In addition, because fraudulent activity could result from cybersecurity or data breaches from insiders, such as advisory or fund personnel, advisers and funds often take precautions concerning information security specifically related to insiders.[18]

C. Overview of Rule Proposal

While some funds and advisers have implemented cybersecurity programs under the existing regulatory framework, there are no Commission rules that specifically require firms to adopt and implement comprehensive cybersecurity programs. Based on our staff's examinations of advisers and funds, we are concerned that some funds and advisers that are registered with us have not implemented reasonably designed cybersecurity programs. As a result, these firms' clients and investors may be at greater risk of harm than those of funds and advisers that have in place appropriate plans to address cybersecurity risks.

To address these concerns, we are proposing rules 206(4)–9 under the Advisers Act and 38a–2 under the Investment Company Act, which would require advisers and funds that are registered or required to be registered with us to implement cybersecurity policies and procedures addressing a number of elements.[19] Under the proposed rules, such an adviser's or fund's cybersecurity policies and procedures generally should be tailored based on its business operations, including its complexity, and attendant cybersecurity risks. Further, the proposed rules would require advisers and funds, at least annually, to review and evaluate the design and effectiveness of their cybersecurity policies and procedures, which would allow them to update them in the face of ever-changing cyber threats and technologies. We believe that advisers and funds should be required to adopt and implement policies and procedures that address a number of elements to increase the likelihood that they are prepared to face a cybersecurity incident (whether that threat comes from an outside actor or the firm's personnel), and that investors and other market participants are protected from a cybersecurity incident that could significantly affect a firm's operations and lead to significant harm to clients and investors.

To address cybersecurity more directly, we also are proposing amendments to adviser and fund disclosure requirements to provide current and prospective advisory clients and fund shareholders with improved information regarding cybersecurity risks and cybersecurity incidents. In particular, we propose amendments to Form ADV for advisers and Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6 for funds. We believe these proposed cybersecurity disclosure requirements would enhance investor protection by requiring that cybersecurity risk or incident-related information is available to increase understanding in these areas and help ensure that investors and clients can make informed investment decisions.

In addition, we are proposing to require advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission on a confidential basis.[20] These reports would bolster the efficiency and effectiveness of our efforts to protect investors in connection with cybersecurity incidents. This reporting would not only help the Commission monitor and evaluate the effects of a cybersecurity incident on an adviser and its clients or a fund and its investors, but also assess the potential systemic risks affecting financial markets more broadly.

Taken together, these reforms are designed to promote a more comprehensive framework to address cybersecurity risks for advisers and funds, thereby reducing the risk that advisers and funds would be not be able to maintain critical operational capability when confronted with a significant cybersecurity incident. These reforms also are designed to give clients and investors better information with which to make investment decisions, and to give the Commission better information with which to conduct comprehensive monitoring and oversight of ever-evolving cybersecurity risks and incidents affecting advisers and funds.

II. Discussion

A. Cybersecurity Risk Management Policies and Procedures

The Commission is proposing rule 206(4)–9 under the Advisers Act and 38a–2 under the Investment Company Act (collectively, ''proposed cybersecurity risk management rules'').[21] The proposed cybersecurity risk management rules would require all advisers and funds to adopt and implement cybersecurity policies and procedures containing certain elements. Advisers and funds of every type and size rely on technology systems and networks and face increasing cybersecurity risks. The rules would therefore require all of these advisers and funds to consider and mitigate cybersecurity risk.[22]

As discussed below, while the proposed cybersecurity risk management rules would require all such advisers and funds to implement cybersecurity hygiene and protection measures, we recognize that there is not a one-size-fits-all approach to addressing cybersecurity risks. As a result, the proposed cybersecurity risk management rules would allow firms to tailor their cybersecurity policies and procedures to fit the nature and scope of their business and address their individual cybersecurity risks.

We request comment on the entities subject to the proposed rules:

1. Should we exempt certain types of advisers or funds from these proposed

[17] *See also* Appendix A to Subpart C of 17 CFR part 248 (setting out Commission guidelines for consideration when implementing an identity theft program).

[18] *See, e.g.,* 17 CFR 270.17j–1; 17 CFR 275.204A–1; *see also generally* Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 24, 1999) [64 FR 46821 (Aug. 27, 1999)] (stating that rule 17j–1 prohibits fraudulent, deceptive or manipulative acts by fund personnel in connection with their personal transactions in securities held or to be acquired by the fund); Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (July 2, 2004) [69 FR 41696 (July 9, 2004)] (stating that rule 204A–1 will benefit advisers by renewing their attention to their fiduciary and other legal obligations, and by increasing their vigilance against inappropriate behavior by employees).

[19] When discussing the requirements proposed in this release, our use of the terms funds and advisers refers to funds and advisers that are registered or required to be registered with the Commission.

[20] *See* 15 U.S.C. 80b–2(a)(29) (defining a ''private fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act'').

[21] Section 206(4) of the Advisers Act permits the Commission to define, and prescribe means reasonably designed to prevent, such acts, practices and courses of business conduct as are fraudulent, deceptive or manipulative under the Advisers Act, and to adopt rules reasonably designed to prevent fraud. We are proposing rule 206(4)–9 as a means reasonably designed to prevent fraud. Section 38(a) of the Investment Company Act authorizes the Commission to ''make . . . such rules and regulations . . . as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in [the Investment Company Act].''

[22] Proposed rule 206(4)–9 would apply to advisers to separately managed accounts and pooled investment vehicles, both private and offered to the public. Proposed rule 38a–2 would apply to mutual funds, exchange-traded funds (''ETFs''), unit investment trusts, registered closed-end funds, and BDCs.

cybersecurity risk management rules? If so, which ones, and why? For example, is there a subset of funds or advisers with operations so limited or staffs so small that the adoption of cybersecurity risk management programs is not beneficial?

2. Should we scale the proposed requirements based on the size of the adviser or fund? If so, which of the elements described below should not be required for smaller advisers or funds? How would we define such smaller advisers or funds? For example, should we define such advisers and funds based on the thresholds that the Commission uses for purposes of the Regulatory Flexibility Act? Would using different thresholds based on assets under management, such as $150 million or $200 million, be appropriate? Would another threshold be more suitable, such as one based on an adviser's or fund's limited operations, staffing, revenues or management?

1. Required Elements of Advisers' and Funds' Policies and Procedures

The proposed cybersecurity risk management rules would require advisers and funds to adopt and implement written policies and procedures that are reasonably designed to address cybersecurity risks. We believe that these policies and procedures would help address operational and other risks that could harm advisory clients and fund investors or lead to the unauthorized access to or use of adviser or fund information.[23] The proposed cybersecurity risk management rules enumerate certain general elements that advisers and funds would be required to address in their cybersecurity policies and procedures.[24] They also contain a number of defined terms that apply across the proposed cybersecurity risk management rules as well as the other rule and form amendments we are proposing.[25]

The general elements are designed to enumerate core areas that firms must address when adopting, implementing, reassessing and updating their cybersecurity policies and procedures. We recognize, however, that given the number and varying characteristics (*e.g.,* size, business, and sophistication) of advisers and funds, firms need the ability to tailor their cybersecurity policies and procedures based on their individual facts and circumstances. The proposed cybersecurity risk management rules therefore give advisers and funds the flexibility to address the general elements based on the particular cybersecurity risks posed by each adviser's or fund's operations and business practices. In addition, because cybersecurity threats are constantly evolving and measures to address those threats continue to advance, this approach would allow an adviser's or fund's cybersecurity policies and procedures to evolve accordingly as firms reassess their cybersecurity risks in accordance with the proposed cybersecurity risk management rules.

The proposed cybersecurity risk management rules also would provide flexibility for the adviser and fund to determine the person or group of people who implement and oversee the effectiveness of its cybersecurity policies and procedures. Wide-ranging areas of expertise could be needed to manage cybersecurity risk. We understand that cybersecurity may be the responsibility of many individuals within an organization, and expertise may be provided both internally and by third-party experts. Within an adviser or fund organization, various officers or employees may be involved in implementing a cybersecurity program, including those who specialize in technology, risk, compliance, and legal matters. Some advisers and funds may be a part of a larger company structure that shares common cybersecurity and information technology (''IT'') personnel, resources, systems, and infrastructure. Advisers and funds may also utilize third-party cybersecurity experts that provide varying perspectives and are well-positioned to understand and assist in managing risks. Multiple perspectives may assist in building a stronger cybersecurity program, and also would allow firms to add expertise as needed in the rapidly changing cybersecurity environment. We believe that this approach allows advisers and funds of differing sizes, organizational structures, and investment strategies to tailor their cybersecurity programs effectively to their operations.

Under the proposed cybersecurity risk management rules, an adviser or fund may choose to administer its cybersecurity policies and procedures using in-house resources with appropriate knowledge and expertise. The proposed framework also does not preclude an adviser or fund from using a third party's cybersecurity risk management services, subject to appropriate oversight. Similarly, subject to appropriate oversight, a fund's adviser or sub-adviser could administer any of the functions of the fund's required policies and procedures.[26] Whether the administrators of an adviser's or fund's cybersecurity policies and procedures are in-house or a third party, reasonably designed policies and procedures must empower these administrators to make decisions and escalate issues to senior officers as necessary for the administrator to carry out the role effectively (*e.g.,* the policies and procedures could include an explicit escalation provision to the adviser's or fund's senior officers). Reasonably designed cybersecurity policies and procedures generally should specify which groups, positions, or individuals, whether in-house or third-party, are responsible for implementing and administering the policies and procedures, including specifying those responsible for communicating incidents internally and

[23] After gaining access to an adviser's or a fund's information systems, an attacker could use this access to steal, disclose, delete, destroy, or modify adviser or fund information, as well as steal client or investor assets.

[24] Funds and advisers may wish to consult a number of resources in connection with these elements. *See, e.g.,* National Institute of Standards and Technology (NIST), *Framework for Improving Critical Infrastructure Cybersecurity,* Version 1.1 (Apr. 16, 2018), *available at https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf* (''NIST Framework''); Cybersecurity and Infrastructure Security Agency (CISA), *Cyber Essentials Starter Kit—The Basics for Building a Culture of Cyber Readiness* (Spring 2021), *available at https://www.cisa.gov/sites/default/files/publications/Cyber%20Essentials%20Starter%20Kit_03.12.2021_508_0.pdf.*

[25] The proposed defined terms for advisers and funds are the same in most instances, except where necessary to take into account relevant differences in each of the proposed cybersecurity risk management rules. For example, the majority of differences between proposed rules 206(4)–9 and 38a–2 are that the rule applicable to advisers includes the word ''adviser'' in a number of terms (*e.g.,* ''adviser information systems'' and ''adviser information'') whereas the rule applicable to funds includes the word ''fund'' (*e.g.,* ''fund information systems'' and ''fund information.'') in a number of terms. We understand that there are different definitions for a number of common terms in the realm of cybersecurity, and we propose terms derived from a number established sources. *See* Presidential Policy Directive—United States Cyber Incident Coordination (July 26, 2016) (''PPD–41''); 6 U.S.C. 1501 (2021); 44 U.S.C. 3502 (2021); 44 U.S.C. 3552 (2021); *see also* National Institute of Standards and Technology (NIST), Computer Security Resource Center Glossary (last visited Feb. 2, 2022), *available at https://csrc.nist.gov/glossary* (''NIST Glossary''). We believe the proposed terms are sufficiently precise and aligned with each other for advisers and funds to understand and utilize in connection with the proposed rules. Using common terms and similar definitions is intended to facilitate compliance and reduce regulatory burdens.

[26] A sub-adviser that is delegated advisory services by an adviser is subject to its own cybersecurity obligations under the proposed risk management rules. Delegating any or all cybersecurity-related activities does not exempt an adviser or fund from its oversight responsibilities.

making decisions with respect to reporting to the Commission and disclosing to clients and investors certain incidents.

We believe that this approach would help ensure that advisers and funds adopt and implement cybersecurity policies and procedures that are effective in mitigating cybersecurity risk without being overly burdensome or costly to implement. Moreover, we believe the proposed cybersecurity risk management rules would benefit advisory clients and fund investors because advisers and funds would be better prepared to confront a cybersecurity incident if (and when) it occurs.[27] The proposed rules also would help to ensure that advisers and funds focus their efforts and resources on mitigating the cybersecurity risks associated with their operations and business practices.[28]

a. Risk Assessment

The first step in designing effective cybersecurity policies and procedures is assessing and understanding the cybersecurity risks facing an adviser or a fund.[29] As an element of an adviser's or fund's reasonable policies and procedures, the proposed cybersecurity risk management rules would require advisers and funds periodically to assess, categorize, prioritize, and draft written documentation of, the cybersecurity risks associated with their information systems and the information residing therein.[30] The proposed cybersecurity risk management rules would require advisers and funds, when conducting this risk assessment, to:

(i) Categorize and prioritize cybersecurity risks based on an inventory of the components of their information systems, the information residing therein, and the potential effect of a cybersecurity incident on the advisers and funds; and

(ii) Identify their service providers that receive, maintain or process adviser or fund information, or that are permitted to access their information systems, including the information residing therein, and identify the cybersecurity risks associated with the use of these service providers.[31]

The proposed rules would also require written documentation of any risk assessment. Generally, this risk assessment should inform senior officers at the adviser or the fund of the risks specific to the firm and support responses to cybersecurity risks by identifying cybersecurity threats to information systems that, if compromised, could result in significant cybersecurity incidents.[32] In general, an adviser or fund's cybersecurity program should be reasonably designed to ensure its operational capability, including resiliency and capacity of information systems, when confronted with a cybersecurity incident, whether at the adviser or at a service provider that may access adviser or fund information.

An adviser or fund generally should assess, categorize, and prioritize the cybersecurity risks created by its information systems and information residing therein in light of the firm's particular operations.[33] For example, advisers may be subject to different risks as a result of international operations, insider threats, or remote or traveling employees. Only after assessing, analyzing, categorizing, and prioritizing its risks can an adviser or fund develop and implement cybersecurity policies and procedures designed to mitigate those risks. The proposed cybersecurity risk management rules would also require advisers and funds to reassess and re-prioritize their cybersecurity risks periodically as changes that affect these risks occur. Due to the ongoing and emerging nature of cybersecurity threats, and the proposed requirement discussed below that advisers and funds review their cybersecurity policies and procedures no less frequently than annually, we are not proposing that such a reassessment occur at specified intervals.[34] Instead, advisers and funds should reassess their cybersecurity risks as they arise to reflect internal changes, such as changes to its business, online presence, or client web access, or external changes, such as changes in the evolving technology and cybersecurity threat landscape, and inform senior officers of the adviser or fund of any material changes to the risk assessment. In assessing ongoing and emerging cybersecurity threats, advisers and funds generally should monitor and consider updates and guidance from private sector and governmental resources, such as the Financial Services Information Sharing and Analysis Center (''FS–ISAC'') and the

[27] We propose to define ''cybersecurity incident'' as ''an unauthorized occurrence on or conducted through [an adviser's or a fund's] information systems that jeopardizes the confidentiality, integrity, or availability of [an adviser's or a fund's] information systems or any [adviser or fund] information residing therein.'' *See* proposed rules 206(4)–9 and 38a–2. This proposed term is derived from the 44 U.S.C. 3552, which is incorporated into PPD–41 (defining ''cyber incident''), and included in the NIST Glossary (defining ''incident''). We believe this term is sufficiently understood and broad enough to encompass incidents that could adversely affect an adviser's or fund's information systems or information residing therein, such as gaining access without authorization or by exceeding authorized access to such systems and information that could lead, for example, to the modification or destruction of systems and information.

[28] We propose to define ''cybersecurity risk'' as the ''financial, operational, legal, reputational, and other adverse consequences that could stem from cybersecurity incidents, threats, and vulnerabilities.'' *See* proposed rules 206(4)–9 and 38a–2. This proposed term is designed to capture risks that an adviser or fund faces when confronted with incidents, threats and vulnerabilities, and we believe is generally well understood in connection with integrating cybersecurity into enterprise risk management. *See generally* NIST Framework, *supra* footnote 24.

[29] Risk assessments are included as an element in many cybersecurity frameworks. *See, e.g.,* NIST Framework, *supra* footnote 24.

[30] *See* proposed rules 206(4)–9(a)(1) and 38a–2(a)(1). ''Adviser information systems'' is proposed to be defined as ''information resources owned or used by the adviser, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of adviser information to maintain or support the adviser's operations.'' *See* proposed rule 206(4)–9; *see also* proposed rule 38a–2 (defining ''fund information systems''). The definitions of these terms are designed to be broad enough to encompass all the electronic information resources owned or used by an adviser or a fund.

[31] ''Adviser information'' is proposed to be defined as ''any electronic information related to the adviser's business, including personal information, received, maintained, created, or processed by the adviser.'' The term ''personal information'' is proposed to be defined as: ''(1) any information that can be used, alone or in conjunction with any other information, to identify an individual, such as name, date of birth, place of birth, telephone number, street address, mother's maiden name, Social Security number, driver's license number, electronic mail address, account number, account password, biometric records or other non-public authentication information; or (2) Any other non-public information regarding a client's account.'' *See* proposed rule 206(4)–9; *see also* proposed rule 38a–2 (the term ''personal information'' in proposed rule 38a–2 does not include the second prong of the same term contained in proposed rule 206(4)–9). The definitions of ''personal information'' for advisers and funds are derived from a number of established sources and aim to capture a broad array of personal information that can reside on an adviser's or a fund's information systems. *See e.g.,* Regulation S–ID, *supra* footnote 16 (defining ''identifying information''); NIST Glossary, *supra* footnote 24 (defining ''personal information'' and ''personally identifiable information'').

[32] ''Cybersecurity threat'' is proposed to be defined as ''any potential occurrence that may result in an unauthorized effort to adversely affect the confidentiality, integrity or availability of [an adviser's or a fund's] information systems or any [adviser or fund] information residing therein.'' *See* proposed rules 206(4)–9 and 38a–2.

[33] Some firms use an enterprise governance, risk management and compliance (''EGRC'') system to manage cybersecurity risk and compliance by creating policies, procedures, and internal controls that assist in identifying cybersecurity risks related to particular systems.

[34] *See* discussion in section II.A.2 below (advisers and funds must review their cybersecurity policies and procedures no less frequently than annually, including preparing and reviewing a written report that is designed to address cybersecurity risk assessments, among other items).

Department of Homeland Security's CISA.[35]

Because many advisers and funds are exposed to cybersecurity risks through the technology of their service providers, a risk assessment also must identify service providers that receive, maintain, or process adviser or fund information, or that are permitted to access their information systems, including the information residing therein and the cybersecurity risks they present.[36] For example, advisers may use service providers who provide trade order management systems that allow the adviser to automate all or some of the adviser's trading, and advisers should consider any cybersecurity risks presented by these services. In identifying cybersecurity risks, an adviser or fund should consider the service provider's cybersecurity practices, including whether any systems used have the resiliency and capacity to process transactions in an accurate, timely and efficient manner, and their capability to protect information and systems (including response and recovery procedures in response to any incidents and any escalation protocols contained therein).

Generally, an adviser or fund should take into account whether a cybersecurity incident at a service provider could lead to the unauthorized access or use of adviser or fund information or technology or process failures. For an adviser, such unauthorized access or use or failure could disrupt portfolio management, trade execution, or other aspects of its operations. For example, an adviser may retain a cloud service provider for maintaining required books and records. If all of the adviser's books and records were concentrated at this cloud service provider and a cybersecurity incident were to occur at the cloud service provider—or any service provider maintaining the adviser's books and records—there could potentially be detrimental data loss affecting the ability of the adviser to provide services and comply with regulatory obligations. Accordingly, as part of identifying the cybersecurity risks associated with using this cloud service provider, the adviser should consider how the service provider will secure and maintain data and whether the service provider has response and recovery procedures in place such that any compromised or lost data in the event of a cybersecurity incident can be recovered and restored.

For a fund, similar unauthorized access or use or failure could affect the valuation of portfolio securities or the processing of shareholder transactions, which could significantly disrupt the fund's operations. For example, a fund may rely on service providers to calculate the fund's net asset value (''NAV''). The inability of an administrator, pricing vendor, or accounting system to calculate a fund's NAV due to a cybersecurity incident would force a fund to consider alternatives. As part of its cybersecurity program and its oversight of service providers, a fund that relies on any service provider for calculating NAV generally should assess the potential cybersecurity risks presented by that service provider and develop procedures to respond to and mitigate disruptions, including by identifying alternative processes or vendors to calculate the fund's NAV.[37] Accordingly, the fund's risk assessment generally should involve inquiring about that service provider's business continuity and disaster recovery protocols with respect to a cybersecurity incident.

b. User Security and Access

As an element of an adviser's or fund's reasonably designed policies and procedures, the proposed cybersecurity risk management rules would require controls designed to minimize user-related risks and prevent the unauthorized access to information and systems.[38] Their policies and procedures must include:

(1) Requiring standards of behavior for individuals authorized to access adviser or fund information systems and any adviser or fund information residing therein, such as an acceptable use policy;

(2) Identifying and authenticating individual users, including implementing authentication measures that require users to present a combination of two or more credentials for access verification;

(3) Establishing procedures for the timely distribution, replacement, and revocation of passwords or methods of authentication;

(4) Restricting access to specific adviser or fund information systems or components thereof and adviser or fund information residing therein solely to individuals requiring access to such systems and information as is necessary for them to perform their responsibilities and functions on behalf of the adviser or fund; and

(5) Securing remote access technologies used to interface with adviser or fund information systems.

The proposed cybersecurity risk management rules would require advisers and funds, as part of their cybersecurity programs, to address user access controls to restrict system and data access to authorized users.[39] Such controls are necessary to prevent and detect unauthorized access to systems or client or investor data or information. In addition, as remote access and teleworking have become increasingly common, we believe that having such measures is a necessary component of robust and comprehensive cybersecurity policies and procedures.

In designing and implementing user access controls, advisers and funds generally should develop a clear understanding of the need for access to systems, data, functions, and/or accounts, including identifying which users have legitimate needs to access particularly critical or sensitive systems, data, functions, or accounts. For example, a portfolio manager may have privileged access to trading systems that permit him or her to enter trades, while a compliance personnel's access may be limited to reviewing or approving, but not entering, trades.

Access to systems and data can be controlled through a variety of means, including, but not limited to, the issuance of user credentials, digital rights management with respect to proprietary hardware and copyrighted software, authentication and authorization methods (*e.g.,* multi-factor authentication and geolocation), and tiered access to sensitive information and network resources. Effective controls would also generally include user security and access measures that are regularly monitored not only to provide access to authorized users, but also to remove access for users that are no longer authorized, whether due to removal from a project or termination of employment.

As part of its user access controls, an adviser or fund should also consider what measures are necessary for clients

[35] Information about FS–ISAC is available at *https://www.fsisac.com.* Information about CISA is available at *https://www.cisa.gov.*

[36] Oversight of third-party service provider or vendor risk is a component of many cybersecurity frameworks. *See, e.g.,* NIST Framework, *supra* footnote 24 (discussing supply chain risks associated with products and services an organization uses).

[37] *See generally* Good Faith Determinations of Fair Value, Investment Company Release No. 34128 (Dec. 3, 2020) [86 FR 748 (Jan. 06, 2021)], at text accompanying nn.94–95 (determining fair value in good faith requires the oversight and evaluation of any pricing services used, including approval, monitoring, and evaluation).

[38] *See* proposed rules 206(4)–9(a)(2) and 38a–2(a)(2).

[39] Advisers and funds generally should consider their potential obligations under Regulation S–P and Regulation S–ID to implement certain access controls with respect to protecting client or investor information.

and investors that have access to information systems and information residing on the systems—not only user access controls for its own personnel. For example, an adviser or fund may implement measures that monitor for unauthorized login attempts and account lockouts, and the handling of customer requests, including for user name and password changes. Similarly, well-designed user access controls should assess the need to authenticate or investigate any unusual customer requests (*e.g.,* wire transfer or withdraw requests).

In developing these policies and procedures, an adviser or fund also should take into account the types of technology through which its users access adviser or fund information systems. For example, mobile devices (whether firm-issued or personal devices) that allow employees to access sensitive data and systems may create additional and unique vulnerabilities, including when such devices are used internationally. An adviser or fund may consider limiting mobile or other devices approved for remote access to those issued by the firm or enrolled through a mobile device manager.[40]

In addition, an adviser or fund should consider its practices with respect to securing remote network access and teleworking to define its network perimeter. Advisers and funds generally should implement detection security capabilities that can identify threats on a network's endpoints. For example, they may utilize software that monitors and inspects all files on an endpoint, such as a mobile phone or remote laptop, and identifies and blocks incoming unauthorized communications. Advisers and funds should also consider cybersecurity best practices in remote or telework locations. For example, if adviser or fund personnel work remotely at home or in a co-working space, additional cybersecurity risks, such as unsecured or less secure Wi-Fi, may be present, resulting in sensitive information being seen, gathered or stolen by unauthorized persons. Accordingly, firms should consider having policies and procedures for using any mobile or other devices approved for remote access, and implementing security measures and training on device policies and effective security practices.

[40] Advisers and funds may wish to consider multi-factor authentication methods that are not based solely on SMS-delivery (*e.g.,* text message delivery) of authentication codes, because such methods may provide less security than other non-SMS based multi-factor authentication methods.

c. Information Protection

As an element of an adviser's or fund's reasonably designed policies and procedures, the proposed cybersecurity risk management rules would require advisers and funds to monitor information systems and protect information from unauthorized access or use, based on a periodic assessment of their information systems and the information that resides on the systems.[41] Such assessment should take into account:

(1) The sensitivity level and importance of adviser or fund information to its business operations;

(2) Whether any adviser or fund information is personal information;

(3) Where and how adviser or fund information is accessed, stored and transmitted, including the monitoring of adviser or fund information in transmission;

(4) Adviser or fund information systems access controls and malware protection; and

(5) The potential effect of a cybersecurity incident involving adviser or fund information on the adviser or fund and its clients or shareholders, including the ability for the adviser to continue to provide investment advice or the fund to continue providing services.

Advisers and funds generally should use the information obtained from this assessment to determine what methods to implement to prevent the unauthorized access or use of such data. For example, an adviser or fund could utilize processes such as encryption, network segmentation, and access controls to ensure that only authorized users have access to sensitive data or information or critical systems.

An adviser or fund could also implement measures reasonably designed to identify suspicious behavior that include consistent monitoring of systems and personnel, such as the generation and review of activity logs, identification of potential anomalous activity, and escalation of issues to senior officers, as appropriate. Such a program may include rules to identify and block the transmission of sensitive data (*e.g.,* account numbers, Social Security numbers, trade information, and source code) from leaving the organization. The program could also include testing of systems, including penetration tests. An adviser or fund could also consider measures to track the actions taken in response to findings from testing and monitoring, material changes to business operations or technology, or any other significant events. Appropriate methods for preventing the unauthorized use of data may differ depending on circumstances specific to an adviser or fund, such as the systems used, the relationship with service providers, or level of access granted to employees or contractors. Appropriate methods would also generally be expected to evolve with changes in technology and the increased sophistication of cybersecurity attacks.

[41] Proposed rules 206(4)–9(a)(3) and 38a–2(a)(3).

In addition, as part of an adviser's or fund's reasonably designed cybersecurity policies and procedures, an adviser or fund would be required to oversee any service providers that receive, maintain, or process adviser or fund information, or are otherwise permitted to access their information systems and any information residing therein. Advisers and funds would be required to document that the adviser or fund is requiring such service providers, pursuant to a written contract, to implement and maintain appropriate measures, including measures similar to the elements advisers and fund must address in their own cybersecurity policies and procedures, designed to protect adviser and fund information and systems. Such policies and procedures generally should also include other oversight measures, such as due diligence procedures or periodic contract review processes, that allow funds and advisers to assess whether, and help to ensure that, their agreements with service providers contain provisions that require service providers to implement and maintain appropriate measures designed to protect fund and adviser information and systems (*e.g.,* notifying the adviser or fund of cybersecurity incidents that adversely affect an adviser's or fund's information, systems, or operations). Given the significant role played by service providers, we believe this proposed requirement would assist advisers and funds, when considering whether to hire or retain service providers, in assessing whether they are capable of appropriately protecting important information and systems.

d. Threat and Vulnerability Management

As an element of an adviser's or fund's reasonably designed policies and procedures, the proposed cybersecurity risk management rules would require advisers and funds to detect, mitigate, and remediate cybersecurity threats and vulnerabilities with respect to adviser or

fund information and systems.[42] Cybersecurity threats may result in unauthorized access to an adviser's or fund's information systems or any information residing therein that could lead to adverse consequences. Cybersecurity vulnerabilities present weaknesses in adviser or fund information systems that attackers may exploit. Because advisers and funds depend on information systems to process, store, and transmit sensitive information and to conduct business functions, it is essential for advisers and funds to manage cybersecurity threats and vulnerabilities effectively.

Detecting, mitigating, and remediating threats and vulnerabilities is essential to preventing cyber incidents before they occur. Advisers and funds generally should seek to detect cybersecurity threats and vulnerabilities through ongoing monitoring (*e.g.,* comprehensive examinations and risk management processes). Ongoing monitoring of vulnerabilities could include, for example, conducting network, system, and application vulnerability assessments. This could include scans or reviews of internal systems, externally-facing systems, new systems, and systems used by service providers. Advisers and funds generally should also monitor industry and government sources for new threat and vulnerability information that may assist them in detecting cybersecurity threats and vulnerabilities.[43]

In general, once a threat or vulnerability is identified, advisers and funds should consider how to mitigate and remediate the threat or vulnerability, with a view towards minimizing the window of opportunity for attackers to exploit vulnerable hardware and software. Methods for mitigating and remediating threats and vulnerabilities could include, for example, implementing a patch management program to ensure timely patching of hardware and software vulnerabilities and maintaining a process to track and address reports of vulnerabilities.[44] An adviser or a fund should adopt policies and procedures that establish accountability for handling vulnerability reports, and processes for intake, assignment, escalation, remediation, and remediation testing. For example, an adviser or fund may use a vulnerability tracking system that includes severity ratings, and metrics for measuring timing for identification, analysis, and remediation of vulnerabilities.

Advisers and funds should also consider role-specific cybersecurity threat and vulnerability and response training. For example, training could include secure system administration courses for IT professionals, vulnerability awareness and prevention training for web application developers, and social engineering awareness training for employees and executives. Advisers and funds that do not proactively address threats and discovered vulnerabilities face an increased likelihood of having their information systems, and the adviser or fund information residing therein, compromised.

e. Cybersecurity Incident Response and Recovery

As an element of an adviser's or fund's reasonable policies and procedures, the proposed cybersecurity risk management rules would require advisers and funds to have measures to detect, respond to, and recover from a cybersecurity incident.[45] These include policies and procedures that are reasonably designed to ensure:

(1) Continued operations of the fund or adviser;

(2) The protection of adviser information systems and the fund or adviser information residing therein;

(3) External and internal cybersecurity incident information sharing and communications; and

(4) Reporting of significant cybersecurity incidents to the Commission.[46]

Finally, the proposed rules would require advisers and funds to prepare written documentation of any cybersecurity incident, including their response and recovery from such an incident.

Cybersecurity incidents can lead to significant business disruptions, including losing the ability to communicate or the ability to access accounts or investments. These incidents also can lead to the unauthorized access or use of adviser or fund information. Having policies and procedures reasonably designed to respond to cybersecurity incidents can help mitigate these significant business disruptions. A cybersecurity program with a clear incident response plan designed to ensure continued operational capability, and the protection of, and access to, sensitive information and data, even if an adviser or fund loses access to its systems, would assist in mitigating the effects of a cybersecurity incident. Advisers and funds, therefore, may wish to consider maintaining physical copies of their incident response plans—and other cybersecurity policies and procedures—to help ensure they can be accessed and implemented during the times they may be needed most.

We believe it is critical for advisers and funds to focus on operational capability, including resiliency and capacity of information systems, so that they can continue to provide services to their clients and investors when facing disruptions resulting from cybersecurity incidents. The ability to recover critical systems or technologies, including those provided by service providers, in a timeframe that meets business requirements, is important to mitigate the consequences of cybersecurity incidents. An adviser or fund may consider implementing safeguards, such as backing up data, which can help facilitate a prompt recovery to allow an adviser or fund to resume operations following a cybersecurity incident that leads to the unauthorized access or use of adviser or fund information.[47]

An incident response plan should also designate adviser or fund personnel to perform specific roles in the case of a cybersecurity incident. This would entail identifying and/or hiring personnel or third parties who have the requisite cybersecurity and recovery expertise (or are able to coordinate effectively with outside experts) as well as identifying personnel who should be kept informed throughout the response and recovery process. In addition, an incident response plan should generally have a clear escalation protocol to ensure that an adviser's and fund's

[42] Proposed rules 206(4)–9(a)(4) and 38a–2(a)(4). *See* proposed definition of ''cybersecurity threat,'' *supra* footnote 32. ''Cybersecurity vulnerability'' is proposed to be defined as ''a vulnerability in [an adviser's or a fund's] information systems, information system security procedures, or internal controls, including vulnerabilities in their design, maintenance, or implementation that, if exploited, could result in a cybersecurity incident.''

[43] *See supra* footnote 35 and accompanying text; *see also, e.g.,* CISA, National Cyber Awareness System—Alerts, *available at https://us-cert.cisa.gov/ncas/alerts* (last visited Feb. 2, 2022) (providing information about current security issues, vulnerabilities, and exploits).

[44] Advisers and funds should also consider the vulnerabilities associated with ''end of life systems'' (*i.e.,* systems in which software is no longer supported by the particular vendor and for which security patches are no longer issued).

[45] Proposed rules 206(4)–9(a)(5) and 38a–2(a)(5).

[46] Incident and response recovery are common elements of many cybersecurity frameworks. *See, e.g.,* NIST Framework, *supra* footnote 24 (setting out incident response and recovery functions and categories, such as planning, improvements (*e.g.,* lessons learned), and communication, in connection with an organization's risk management processes).

[47] Because having easily accessible, accurate backup data could be critical when responding to and recovering from a cybersecurity incident, advisers and funds may wish to consider storing sensitive backup data in immutable, multi-tiered online and offline storage systems.

senior officers, including appropriate legal and compliance personnel, and a fund's board (as applicable) receive necessary information regarding cybersecurity incidents on a timely basis.

Moreover, under proposed rule 204–6 and amendments to Form ADV Part 2A, as well as amendments to funds' disclosure requirements, advisers and funds would have to report any significant cybersecurity incidents to the Commission and make appropriate disclosures to their clients and investors.[48] Accordingly, advisers and funds must include provisions in their policies and procedures designed to ensure their compliance with their reporting and disclosure obligations as part of their cybersecurity incident response.[49]

Advisers and funds should also consider testing their incident response plans to assess their efficacy and to determine whether any changes are necessary, for example, through tabletop or full-scale exercises. As part of the annual review of their policies and procedures, advisers and funds are required to review and assess the design and effectiveness of the policies and procedures and should generally consider amendments to correct any identified weaknesses in their design or effectiveness.[50]

We request comment on the proposed cybersecurity risk management rules:

3. Are the proposed elements of the cybersecurity policies and procedures appropriate? Should we modify or delete any of the proposed elements? Why or why not? For example, should advisers and funds be required, as proposed, to conduct a risk assessment as part of their cybersecurity policies and procedures? Should we require that a risk assessment include specific components (*e.g.,* identification and documentation of vulnerabilities and threats, identification of the business effect of threats and likelihood of incidents occurring, identification and prioritization of responses), or require written documentation for risk assessments? Should the rules require policies and procedures related to user security and access, as well as information protection?

4. Should there be additional or more specific requirements for who would implement an adviser's or fund's cybersecurity program? For example, should we require an adviser or fund to specify an individual, such as a chief information security officer, or group of individuals as responsible for implementing the program or parts thereof? Why or why not? If so, should such an individual or group of individuals be required to have certain qualifications or experience related to cybersecurity, and if so, what type of qualifications or experience should be required?

5. The Investment Company Act compliance rule prohibits the fund's officers, directors, employees, adviser, principal underwriter, or any person acting under the direction of these persons, from directly or indirectly taking any action to coerce, manipulate, mislead or fraudulently influence the fund's chief compliance officer in the performance of her responsibilities under the rule in order to protect the chief compliance officer from undue influence by those seeking to conceal non-compliance with the Federal securities laws. Should we adopt a similar prohibition for those administering a fund's or adviser's cybersecurity policies and procedures? Why or why not?

6. Would advisers and funds expect to use sub-advisers or other third parties to administer their cybersecurity programs? If so, to what extent and in what manner? Should there be additional or specific requirements for advisers and funds that delegate cybersecurity management responsibilities to a sub-adviser or third party? If so, what requirements and why?

7. Should we include any other cybersecurity program administration requirements? If so, what? For example, should we include a requirement for training staff responsible for day-to-day management of the program? If we require such training, should that involve setting minimum qualifications for staff responsible for carrying out the requirements of the program? Why or why not?

8. Are the proposed rules' definitions appropriate and clear? If not, how could these definitions be clarified within the context of the proposed rules? Should any be modified or eliminated? Are any of them proposed terms too broad or too narrow? Are there other terms that we should define?

9. What are best practices that commenters have developed or are aware of with respect to the types of measures that must be implemented as part of the proposed cybersecurity risk management rules or, alternatively, are there any measures that commenters have found to be ineffective or relatively less effective?

10. What user measures do advisers currently have for using mobile devices or other ways to access adviser or fund information systems remotely? Should we require advisers and funds to implement specific measures to secure remote access technologies?

11. Do advisers and funds currently conduct periodic assessments of their information systems to monitor and protect information from unauthorized use? If so, how often do advisers and funds conduct such assessments? Should the proposed rules specify a minimum assessment frequency, and if so, what should that frequency be?

12. Other than what is required to be reported under proposed rule 204–6, should we require any specific measures within an adviser's policies and procedures with respect to cybersecurity incident response and recovery?

13. Should we require that advisers and funds respond to cybersecurity incidents within a specific timeframe? If so, what would be an appropriate timeframe?

14. Should we require advisers and funds to assess the compliance of all service providers that receive, maintain, or process adviser or fund information, or are otherwise permitted to access adviser or fund information systems and any adviser or fund information residing therein, with these proposed cybersecurity risk management rules? Should we expand or narrow this set of service providers? For example, with respect to funds, should this requirement only apply to ''named service providers'' as discussed above?

15. How do advisers and funds currently consider cybersecurity risks when choosing third-party service providers? What due diligence with respect to cybersecurity is involved in selecting a service provider?

16. How do advisers and funds reduce the risk of a cybersecurity incident transferring from the service provider (or a fourth party (*i.e.,* a service provider used by one of an adviser's or fund's service providers)) to the adviser today?

17. Should we require advisers' and funds' cybersecurity policies and procedures to require oversight of certain service providers, including that such service providers implement and maintain appropriate measures designed to protect a fund's or an adviser's

[48] *See* proposed rule 204–6; *see also infra* sections II.B and C.

[49] Although an adviser's or a fund's initial focus may be on protecting its clients and investors, it may also wish to implement a process to determine promptly whether and how to contact local and Federal law enforcement authorities, such as the FBI, about an incident. The FBI has instructed individuals and organizations to contact their nearest FBI field office to report cybersecurity incidents or to report them online at *https://www.ic3.gov/Home/FileComplaint. See also* FBI, What We Investigate, Cyber Crime, *available at https://www.fbi.gov/investigate/cyber* (last visited Feb. 2, 2022).

[50] *See* proposed rules 206(4)–9(b) and 38a–2(b).

information and information systems pursuant to written contract? Do advisers and funds currently include specific cybersecurity and data protection provisions in their agreements with service providers? If so, what provisions are the most important? Do they address potential cybersecurity risks that could result from a cybersecurity incident occurring at a fourth party? Should any contractual provisions be specifically required as part of these rules? Should this requirement apply to a more limited subset of service providers? If so, which service providers? For example, should we require funds to include such provisions in their agreements with advisers that would be subject to proposed rule 206(4)–9? Are there other ways we should require protective actions by service providers?

18. Do advisers or funds currently consider their or their service providers' insurance policies, if any, when responding to cybersecurity incidents? Why or why not?

19. Are advisers and funds currently able to obtain information from or about their service providers' cybersecurity practices (*e.g.,* policies, procedures, and controls) to effectively assess them? What, if any, challenges do advisers and funds currently have in obtaining such information? Are certain advisers or funds (*e.g.,* smaller or larger firms) more easily able to obtain such information?

2. Annual Review and Required Written Reports

The proposed cybersecurity risk management rules would require advisers and funds to review their cybersecurity policies and procedures no less frequently than annually.[51] Advisers and funds must, at least annually: (1) Review and assess the design and effectiveness of the cybersecurity policies and procedures, including whether they reflect changes in cybersecurity risk over the time period covered by the review; and (2) prepare a written report. The report would, at a minimum, describe the annual review, assessment, and any control tests performed, explain the results thereof, document any cybersecurity incident that occurred since the date of the last report, and discuss any material changes to the policies and procedures since the date of the last report.

The annual review requirement is designed to require advisers and funds to evaluate whether their cybersecurity policies and procedures continue to work as designed and whether changes are needed to assure their continued effectiveness, including oversight of any delegated responsibilities. The written report should be prepared or overseen by the persons who administer the adviser's or fund's cybersecurity policies and procedures and should consider any risk assessments performed by the adviser or fund. We recognize that a cybersecurity expert may provide needed expertise and perspective to the annual review, but additional adviser or fund personnel generally should also participate to provide their organizational perspective, as well as ensure accountability and appropriate resources.

We request comment on the proposed requirements for a review and assessment of the policies and procedures and a related written report:

20. Should there be additional, fewer, or more specific requirements for the annual review or written report? Why or why not?

21. Is the proposed requirement for advisers and funds to review their cybersecurity policies and procedures at least annually appropriate? Is this minimum review period too long or too short? Why or why not?

22. Should the annual review include whether the cybersecurity policies and procedures reflect changes in cybersecurity risk over the time period covered by the review? Why or why not?

23. Should management, a cybersecurity officer, or a centralized committee be designated to conduct the annual review and prepare the report? Would additional specificity promote accountability and adequate resources? Should relevant expertise be required? Why or why not?

24. Would the proposed annual review raise any particular challenges for smaller or different types of advisers or funds? If so, what could we do to help mitigate these challenges?

25. Are there any conflicts of interest if the same adviser or fund officers implement the cybersecurity program and also conduct the annual review? How can those conflicts be mitigated or eliminated? Should advisers and funds be required to have their cybersecurity policies and procedures periodically audited by an independent third party to assess their design and effectiveness? Why or why not? If so, are there particular cybersecurity-focused audits or assessments that should be required, and should any such audits or assessments be required to be performed by particular professionals (*e.g.,* certified public accountants)? Would there be any challenges in obtaining such audits, particularly for smaller advisers or funds?

3. Fund Board Oversight

Proposed rule 38a–2 would require a fund's board of directors, including a majority of its independent directors, initially to approve the fund's cybersecurity policies and procedures, as well as to review the written report on cybersecurity incidents and material changes to the fund's cybersecurity policies and procedures that, as described above, would be required to be prepared at least annually.[52] These requirements are designed both to facilitate the board's oversight of the fund's cybersecurity program and provide accountability for the administration of the program. These requirements also would be consistent with a board's duty to oversee other aspects of the management and operations of a fund.[53] Board oversight should not be a passive activity, and the requirements for the board to initially approve the fund's cybersecurity policies and procedures and thereafter to review the required written reports are designed to assist directors in understanding a fund's cybersecurity risk management policies and procedures, as well as the risks they are designed to address.

A fund's independent directors play an important role in overseeing fund activities.[54] We believe this should include reviewing and initially approving a fund's cybersecurity policies and procedures to help ensure that the fund's adviser has committed sufficient resources to the activity. Directors may satisfy their obligation with respect to the initial approval by reviewing summaries of the cybersecurity program prepared by persons who administer the fund's

[51] Proposed rules 206(4)–9(b) and 38a–2(b). As discussed below, the proposed rules would require funds' boards of directors to review funds' required written reports. *See infra* section II.A.3.

[52] Proposed rule 38a–2(c). The board may satisfy its obligation to approve a fund's cybersecurity policies and procedures by reviewing summaries of those policies and procedures. This is similar to how directors may satisfy their obligations under rule 38a–1. *See* Compliance Program Release, *supra* footnote 10, at n.33.

[53] *See, e.g.,* rule 38a–1 under the Investment Company Act; Compliance Program Release, *supra* footnote 10, at n.31.

[54] Fund directors are commonly referred to as ''independent directors'' if they are not ''interested persons'' of the fund. The term ''interested person'' is defined in section 2(a)(19) of the Investment Company Act [15 U.S.C. 80a–2(a)(19)]. If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the policies and procedures. Proposed rule 38a–2(d). Fund boards, including a majority of independent directors, approve fund advisory contracts, among other oversight functions. *See* Section 15(c) of the Investment Company Act [15 U.S.C. 80a–15(c)]. *See also* rule 38a–1 under the Investment Company Act.

cybersecurity policies and procedures. Any documentation provided to the board with respect to the initial approval should generally serve to familiarize directors with the salient features of the program and provide them with an understanding of the operation and administration of the program. In considering whether to approve the policies and procedures, a board may wish to consider the fund's exposure to cybersecurity risks, including those of its service providers, as appropriate, and any recent threats and incidents to which the fund may have been subject.

The required written reports also would provide fund directors with information necessary to ask questions and seek relevant information regarding the effectiveness of the program and its implementation, and whether the fund has adequate resources with respect to cybersecurity matters, including access to cybersecurity expertise. We anticipate that a fund's board's review of the written reports would naturally involve inquiries about cybersecurity risks arising from the program and any incidents that have occurred.

Boards should also consider what level of oversight of the fund's service providers is appropriate with respect to cybersecurity based on the fund's operations. For example, a board may review the service provider contract and risk assessment (or summaries thereof) of any service providers that receive, maintain or process fund information, or that are permitted to access their information systems, including the information residing therein and the cybersecurity risks they present, in the required written reports. Generally, the board should follow up regarding any questions on the contracts or weaknesses found in the risk assessments as well as the steps the fund has taken to address the fund's overall cybersecurity risks, including as those risks may change over time.

We request comment on the proposed initial board approval of the fund's cybersecurity policies and procedures, as well as the proposed requirement for the board to review the written reports that would be prepared at least annually under the proposed rules:

26. Should the Commission require a fund's board, including a majority of its independent directors, initially to approve the cybersecurity policies and procedures, as proposed? As an alternative, should the Commission require approval by the board, but not specify that this approval also must include approval by a majority of the fund's directors who are not interested persons of the fund? Why or why not?

27. As part of their oversight function, should fund boards also be required to approve the cybersecurity policies and procedures of certain of the fund's service providers (*e.g.,* its investment adviser, principal underwriter, administrator, and transfer agent)? Why or why not? If so, which service providers should be included and why?

28. Should a fund's board, or some designee such as a sub-committee or cybersecurity expert, have oversight over the fund's risk assessments of service providers? Why or why not?

29. Should the Commission require boards to base their approval of cybersecurity policies and procedures on any particular finding, for example, that that they are reasonably designed to prevent violations of the Federal securities laws or reasonably designed to address the fund's cybersecurity risks? Why or why not?

30. Does the release provide adequate guidance to funds' boards regarding their initial approval of the cybersecurity policies and procedures? Why or why not? Should the Commission provide any additional guidance in this regard? If so, what guidance would assist boards in their approval process? For example, should the Commission provide additional guidance on documentation provided to the board with respect to the initial approval?

31. Is the proposed requirement for fund boards to review the required written reports appropriate? The proposed rules would require these reports to be prepared at least annually, and a fund's board would be required to review each such report that is prepared. Should the Commission instead require periodic reviews of a report on the fund's cybersecurity risk management policies and procedures, or specify a shorter or longer frequency for review of such a report? Why or why not?

32. Should the Commission require boards to approve any material changes to the fund's cybersecurity policies and procedures instead of reviewing a written report that discusses such changes? Why or why not?

4. Recordkeeping

As part of the proposed cybersecurity risk management rules, we are proposing new recordkeeping requirements under the Advisers Act and Investment Company Act. Advisers Act rule 204–2, the books and records rule, sets forth requirements for maintaining, making, and retaining books and records relating to an adviser's investment advisory business. We are proposing to amend this rule to require advisers to maintain: (1) A copy of their cybersecurity policies and procedures formulated pursuant to proposed rule 206(4)–9 that are in effect, or at any time within the past five years were in effect; (2) a copy of the adviser's written report documenting the annual review of its cybersecurity policies and procedures pursuant to proposed rule 206(4)–9 in the last five years; (3) a copy of any Form ADV–C filed by the adviser under rule 204–6 in the last five years; (4) records documenting the occurrence of any cybersecurity incident, including any records related to any response and recovery from such an incident, in the last five years; and (5) records documenting an adviser's cybersecurity risk assessment in the last five years.[55] Records documenting the occurrence of a cybersecurity incident may include event or incident logs, as well as longer descriptions depending on the nature and scope of the incident. These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities.

Similarly, proposed rule 38a–2 under the Investment Company Act would require that a fund maintain: (1) A copy of its cybersecurity policies and procedures that are in effect, or at any time within the last five years were in effect; (2) copies of written reports provided to its board; (3) records documenting the fund's annual review of its cybersecurity policies and procedures; (4) any report of a significant fund cybersecurity incident provided to the Commission by its adviser; (5) records documenting the occurrence of any cybersecurity incident, including any records related to any response and recovery from such an incident; and (6) records documenting the fund's cybersecurity risk assessment.[56] These records would have to be maintained for five years, the first two years in an easily accessible place.[57]

We request comments on the proposed recordkeeping requirements:

33. Are the records that we propose to require advisers and funds to keep relating to the proposed cybersecurity risk management rules appropriate? Why or why not? Should advisers and

[55] *See* proposed rule 204–2(a)(17)(i), (iv) through (vii).

[56] *See* proposed rule 38a–2(e). If the fund is a unit investment trust, copies of materials provided to its principal underwriter or depositor should be maintained for at least five years after the end of the fiscal year in which the documents were provided.

[57] *See* proposed rule 38a–2(e). A copy of the fund's policies and procedures that are in effect, or were at any time within the past five years in effect, must be kept in an easily accessible place for five years. *See* proposed rule 38a–2(e)(1).

funds have to keep any additional or fewer records, and if so, what records?

34. Do advisers or funds have concerns it will be difficult to retain any of documents? Could this place an undue burden on smaller advisers or funds?

B. Reporting of Significant Cybersecurity Incidents to the Commission

We are proposing a new reporting rule requirement and related proposed Form ADV–C. Advisers would be required to report significant cybersecurity incidents to the Commission, including on behalf of a client that is a registered investment company or business development company, or a private fund (referred to in this release as ''covered clients'') that experiences a significant cybersecurity incident. Specifically, under proposed rule 204–6, any adviser registered or required to be registered with the Commission as an investment adviser would be required to submit proposed Form ADV–C promptly, but in no event more than 48 hours, after having a reasonable basis to conclude that a significant adviser cybersecurity incident or a significant fund cybersecurity incident had occurred or is occurring.[58] Form ADV–C would include both general and specific questions related to the significant cybersecurity incident, such as the nature and scope of the incident as well as whether any disclosure has been made to any clients and/or investors.[59] Proposed rule 204–6 would also require advisers to amend any previously filed Form ADV–C promptly, but in no event more than 48 hours, after information reported on the form becomes materially inaccurate; if new material information about a previously reported incident is discovered; and after resolving a previously reported incident or closing an internal investigation pertaining to a previously disclosed incident.

This reporting would help us in our efforts to protect investors in connection with cybersecurity incidents by providing prompt notice of these incidents. We believe this proposed reporting would allow the Commission and its staff to understand the nature and extent of a particular cybersecurity incident and the firm's response to the incident. As stated above, this reporting would not only help the Commission monitor and evaluate the effects of the cybersecurity incident on an adviser and its clients or a fund and its investors, but also assess the potential systemic risks affecting financial markets more broadly. For example, these reports could assist the Commission in identifying patterns and trends across registrants, including widespread cybersecurity incidents affecting multiple advisers and funds.

1. Proposed Rule 204–6

Proposed rule 204–6 would require investment advisers to report on Form ADV–C within 48 hours after having a reasonable basis to conclude that a significant adviser cybersecurity incident or a significant fund cybersecurity incident occurred or is occurring. The rule would define a significant adviser cybersecurity incident as a cybersecurity incident, or a group of related incidents, that significantly disrupts or degrades the adviser's ability, or the ability of a private fund client of the adviser, to maintain critical operations, or leads to the unauthorized access or use of adviser information, where the unauthorized access or use of such information results in: (1) Substantial harm to the adviser, or (2) substantial harm to a client, or an investor in a private fund, whose information was accessed.[60]

The first prong of the definition of significant adviser cybersecurity incident includes a cybersecurity incident, or a group of related cybersecurity incidents, that significantly disrupts or degrades the adviser's ability, or the ability of a private fund client of the adviser, to maintain critical operations. If an adviser were unable to maintain critical operations, such as the ability to implement its investment strategy, process or record transactions, or communicate with clients, there is potential for substantial loss to both the adviser and its clients. For example, if an adviser's internal computer systems, including its websites or email function, are shut down due to malware, it could have a significant effect on the ability for the adviser to continue to provide advisory services and for the adviser's clients to access their investments or communication with the adviser. In such a situation, it is possible that the adviser's employees would not be able to access the computer systems they need to make trades or manage a client's portfolio, and advisory clients may not be able to access their accounts through the adviser's web page or other channels that were affected by the malware.[61] Depending on the type of malware, this could lock up advisory client records, among other things, and affect an adviser's decision-making and investments for days, or even weeks. This in turn could potentially affect the market, particularly if other advisers are similarly targeted with the same malware. Reporting to the Commission the occurrence of such an incident, we believe, could help the Commission monitor and evaluate the effects of the event on an adviser or fund and its clients and investors, and the broader financial markets. For example, reporting by a large adviser or a series of advisers of similar occurrences could signal a market-wide event requiring Commission attention and, if necessary, coordination with other governmental agencies.

Under the proposed rules, a significant adviser cybersecurity incident would also include significant cybersecurity incidents affecting private fund clients of an adviser. Given that a cybersecurity incident that significantly disrupts or degrades the ability of a private fund to maintain its critical operations could potentially cause similar substantial losses to the adviser and private fund investors, and that private funds play a significant role in the financial industry, we believe that such incidents should be reported as well.

The second prong of the definition of a significant adviser cybersecurity incident would include a cybersecurity incident that leads to unauthorized access or use of adviser information, where the unauthorized access or use of such information results in: (1) Substantial harm to the adviser, or (2) substantial harm to a client, or an investor in a private fund, whose information was accessed.[62] Substantial harm to an adviser as the result of a cybersecurity incident in which adviser information is compromised could include, among other things, significant monetary loss or theft of intellectual

[58] *See* proposed rules 204–6 and 38a–2.

[59] *See* proposed Form ADV–C.

[60] *See* proposed rule 204–6(b); *see also* proposed rule 206(4)–9. This proposed definition is substantially similar to the proposed definition of ''significant fund cybersecurity incident'' for funds. We view critical operations as including investment, trading, reporting, and risk management of an adviser or fund as well as operating in accordance with the Federal securities laws.

[61] Account access could also be affected by denial of service (''DoS'') attacks that disrupt customer access for extended periods of time. We understand that DoS attacks are often accompanied by ransom demands to stop any attack and/or are used as a diversionary measure to exfiltrate (or remove) information or probe further into business networks.

[62] Proposed rule 204–6(b). There may be times where an incident meets both prongs. For example, a breach of an adviser's internal computer systems may affect the adviser's ability to maintain critical operations as well as result in substantial harm to the adviser, its clients, or investors in private fund clients of the adviser.

property. Substantial harm to a client or an investor in a private fund as the result of a cybersecurity incident in which adviser information is compromised could include, among other things, significant monetary loss or the theft of personally identifiable or proprietary information.[63] After gaining access to an adviser's or a fund's systems, an attacker could use this access to disclose, modify, delete or destroy adviser, fund, or client data, as well as steal intellectual property and client assets. Any of these actions could result in substantial harm to the adviser and/or to the client.

In addition to reporting significant cybersecurity incidents for itself and its private fund clients, an adviser would also have to report significant fund cybersecurity incidents on Form ADV–C for its registered fund and BDC clients. Similar to a significant adviser cybersecurity incident, a significant fund cybersecurity incident has two prongs, that it: (1) Significantly disrupts or degrades the fund's ability to maintain critical operations, or (2) leads to the unauthorized access or use of fund information, which results in substantial harm to the fund, or to the investor whose information was accessed.[64] Significant fund cybersecurity incidents may include cyber intruders interfering with a fund's ability to redeem investors, calculate NAV or otherwise conduct its business. Other significant fund cybersecurity incidents may involve the theft of fund information, such as non-public portfolio holdings, or personally identifiable information of the fund's employees, directors or shareholders.

In order to assist the adviser in reporting a significant fund cybersecurity incident, a fund's cybersecurity policies and procedures must address the proposed notification requirement to the Commission on Form ADV–C. Generally, these provisions of the policies and procedures should address communications between the person(s) who administer the fund's cybersecurity policies and procedures and the adviser about cybersecurity incidents, including those affecting the fund's service providers.

An adviser would have to report within 48 hours after having a reasonable basis to conclude that any significant adviser or fund cybersecurity incident has occurred or is occurring with respect to itself or any of its clients that are covered clients.[65] In other words, an adviser must report within 48 hours after having a reasonable basis to conclude that an incident has occurred or is occurring, and not after definitively concluding that an incident has occurred or is occurring. The 48-hour period would give an adviser time to confirm its preliminary analysis, and prepare the report while still providing the Commission with timely notice about the incident.

We are also requiring that advisers amend a previously filed Form ADV–C promptly, but in no event more than 48 hours, in connection with certain incidents. Advisers would be required to update the Commission by filing an amended Form ADV–C if any previously reported information about a significant cybersecurity incident becomes materially inaccurate or if the adviser discovers new material information related to an incident.[66] We are also proposing to require advisers to file a final Form ADV–C amendment after the resolution of any significant cybersecurity incident or after closing any internal investigation related to a previously disclosed incident.[67] We believe requiring advisers to amend Form ADV–C in these circumstances would help to ensure the Commission has accurate and timely information with respect to significant adviser and fund cybersecurity incidents to allocate resources better when evaluating and responding to these incidents. While advisers and funds have other incentives to investigate and remediate significant cybersecurity incidents, we believe these ongoing reporting obligations would further encourage advisers and funds to take the steps necessary to do so completely. Moreover, based on our experience with other regulatory filings, we believe it is likely that an adviser could regularly engage in a productive dialogue with applicable Commission staff after the reporting of an incident and the filing of any amendments to Form ADV–C, and, as part of that dialogue, could provide Commission staff with any additional information as necessary, depending on the facts and circumstances of the incident and the progress in resolving it.

We request comments on the proposed reporting rule 204–6 and the reporting thresholds.

35. Should we require advisers to report significant cybersecurity incidents of the adviser and covered clients with the Commission? Why or why not? Alternatively, should we exclude incidents that affect private fund clients of an adviser? Should we exclude registered funds and BDCs as covered clients? If so, should we require them to report to the Commission in another manner? How should the Commission address funds that are internally managed? Should we require a separate reporting requirement under the Investment Company Act for such funds? If so, should it be substantially similar to the proposed reporting requirements under rule 204–6?

36. Should we require advisers to report on significant cybersecurity incidents of other pooled investment vehicle clients? For example, should we require advisers to report on significant cybersecurity incidents of pooled investment vehicles that rely on the exemption from the definition of ''investment company'' in section 3(c)(5)(C) of that Act?[68]

37. Who should be responsible for having a reasonable basis to conclude that there has been a significant adviser cybersecurity incident or significant fund cybersecurity incident or that one is occurring? Should the Commission require a person or role be designated to be the one responsible for gathering relevant information about the incident and having a reasonable basis to conclude that such an incident occurred?

38. At what point would one conclude that there has been a significant adviser cybersecurity incident or significant fund cybersecurity incident? Would it be after some reasonable period of assessment or some other point?

39. Are the proposed definitions of significant adviser cybersecurity incident and significant fund cybersecurity incident appropriate and clear? If not, how could they be made clearer? Should the term critical operations be defined for advisers and funds, and if so what adviser and fund

[63] When considering their obligations under these proposed reporting and risk management requirements, advisers and funds should also keep in mind their obligations with respect to safeguarding client information, such as those required by Regulation S–P and under an adviser's fiduciary duty.

[64] *See* proposed rules 204–6(b) and 38a–2.

[65] We believe that an adviser would generally gather relevant information and perform an initial analysis to assess whether to reasonably conclude that a cybersecurity incident has occurred or is occurring and follow its own internal communication and escalation protocols concerning such an incident before providing notification of any significant cybersecurity incident to the Commission.

[66] *See* proposed rule 204–6(a)(2)(i) and (ii).

[67] *See* proposed rule 204–6(a)(2)(iii).

[68] Section 3(c)(5)(C) of the Investment Company Act provides an exclusion from the definition of investment company for any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

operations should be considered critical? For example, should critical operations include the investment, trading, valuation, reporting, and risk management of the adviser or fund as well as the operation of the adviser or fund in accordance with the Federal securities laws? Alternatively, should there be a quantitative threshold at which operations must be impaired by a cybersecurity incident before an adviser's or fund's obligation to report is triggered (for example, maintaining operations at minimally 80% of current levels on any function)? If so, what should that threshold be and how should an adviser or fund measure its operational capacity to determine whether that threshold has been crossed?

40. Is the proposed ''substantial harm'' threshold under the definition of significant adviser and fund cybersecurity incident appropriate? Should we also include ''inconvenience'' as a threshold with respect to shareholders, clients and investors? In other words, should we also require reporting if the unauthorized access or use of such information results in substantial harm or inconvenience to a shareholder, client, or an investor in a private fund, whose information was accessed?

41. Do commenters believe requiring the report 48 hours after having a reasonable basis to conclude that there has been a significant adviser cybersecurity incident or significant fund cybersecurity incident or that one is occurring is appropriate? If not, is it too long or too short? Should we require a specific time frame at all? Do commenters believe that ''a reasonable basis'' is a clear standard? If not, what other standard should we use?

42. Should we provide for one or more exceptions to the reporting of significant cybersecurity incidents, for example for smaller advisers or funds? Are there ways, other than the filing of Form ADV–C, we should require advisers to notify the Commission regarding significant cybersecurity incidents?

43. The Commission recently proposed current reporting requirements that would require large hedge fund advisers to file a current report on Form PF within one business day of the occurrence of a reporting events at a qualifying hedge fund that they advise.[69] The proposed reporting events include a significant disruption or degradation of the reporting fund's key operations, which could include a significant cybersecurity incident. If the amendments to Form PF are adopted, should the Commission provide an exception to the Form ADV–C filing requirements when an adviser has reported the incident as a current report on Form PF? Alternatively, should the Commission provide an exception to the Form PF current reporting requirements if the adviser filed a Form ADV–C in connection with the reporting event?

44. Should advisers be required to provide the Commission with ongoing reporting about significant cybersecurity incidents? If so, are the proposed requirements to amend Form ADV–C promptly, but in no event more than within 48 hours, sufficient for such reporting? Is this timeframe appropriate? Should we require a shorter or longer timeframe? Is the materiality threshold for ongoing reports appropriate? Should we require another mechanism be used for ongoing reporting? For example, should advisers instead be required to provide periodic reports about significant cybersecurity incidents that are ongoing? If so, how often should such reports be required (*e.g.,* every 30 days) and what information should advisers be required to provide?

2. Form ADV–C

The Commission is proposing a new Form ADV–C to require an adviser to provide information regarding a significant cybersecurity incident in a structured format through a series of check-the-box and fill-in-the-blank questions. We believe that collecting information in a structured format would enhance our staff's ability to carry out our risk-based examination program and other risk assessment and monitoring activities effectively. By enhancing comparability across multiple filers, the structured format would also assist our staff in assessing trends in cybersecurity incidents across the industry and accordingly better protect investors from any patterned cybersecurity threats.

The proposed rule would require Form ADV–C to be filed electronically with the Commission through the Investment Adviser Registration Depository (''IARD'') platform. We considered proposing other electronic filing platforms, either maintained by the Commission or by a third-party contractor. However, we believe that there would likely be efficiencies realized if the IARD platform is expanded for this purpose, such as the possible interconnectivity of Form ADV filings and Form ADV–C filings, and possible ease of filing with one password. Moreover, the IARD platform is a familiar filing system for advisers.

Proposed Form ADV–C would require advisers to report certain information regarding a significant cybersecurity incident in order to allow the Commission and its staff to understand the nature and extent of the cybersecurity incident and the adviser's response to the incident.

Items 1 through 4 request the following information about the adviser: (1) Investment Advisers Act SEC File Number; (2) full name of investment adviser; (3) name under which business is conducted; (4) address of principal place of business; and (5) contact information for an individual with respect to the significant cybersecurity incident being reported: (name, title, address if different from above, phone, email address). These items are designed to provide the Commission with basic identifying information regarding the adviser. We anticipate that the IARD system will pre-populate this information, other than the contact information for the individual whom should be contacted for additional information about the incident being reported.

Items 6 through 9 would elicit whether the adviser is reporting a significant adviser cybersecurity incident or a significant fund cybersecurity incident (or both), the approximate date the incident occurred, the approximate date the incident was discovered, and whether the incident is ongoing. This information would provide the Commission with important background information regarding the incident. This information would also inform the Commission if the incident presents an ongoing threat and assist the Commission in prioritizing its outreach to advisers following multiple Form ADV–C filings in the same time period.

Item 10 would require the adviser to disclose whether law enforcement or a government agency has been notified about the cybersecurity incident. In assessing the risk to the broader financial market, it may be important for the Commission to coordinate with other governmental authorities. Therefore, this disclosure would inform the Commission whether an adviser or fund has already notified local and Federal law enforcement authorities, such as the FBI, or a local or Federal government agency, such as the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, about an incident.

Items 11 through 15 would require the adviser to provide the Commission with substantive information about the

[69] *See* Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Investment Advisers Act Release No. 5950 (Jan. 26, 2022).

nature and scope of the incident being reported, including any actions and planned actions to recover from the incident; whether any data was stolen altered, or accessed or used for any other unauthorized purpose; and whether the significant cybersecurity incident has been disclosed to the adviser's clients and/or to investors. When describing the nature and scope of the incident being reported, advisers generally should describe whether, and if so how, the incident has affected its critical operations, including which systems or services have been affected, and whether the incident being reported was the result of a cybersecurity incident that occurred at a service provider. Further, to the extent an adviser reports a significant cybersecurity incident that resulted from a cybersecurity incident that occurred at a service provider, generally the adviser also should describe the services provided to the adviser or funds it advises by the provider that experienced the incident and how any degradation in those services have affected the adviser's—or its registered and private fund clients'—operations. This information should provide the Commission with sufficient detail regarding the incident to understand its potential effects and whether the adviser can continue to provide services to its clients and investors. The information would also help the Commission determine whether the incident merits further analysis by the Commission and its staff and/or whether the Commission and its staff should collect additional information from the adviser.

Item 16 would require the adviser to disclose whether the cybersecurity incident is covered under a cybersecurity insurance policy. This information would assist the Commission in understanding the potential effect that incident could have on an adviser's clients. This information would also be helpful in evaluating the adviser's response to the incident given that cybersecurity insurance may require an adviser to take certain actions during and after a cybersecurity incident.

After realizing a cybersecurity incident has occurred, an adviser may need time to determine the scope and effect of the incident to provide meaningful responses to these questions. We recognize that the adviser may be working diligently to investigate and resolve the cybersecurity incident at the time it would be required to report to the Commission under the proposed rule. We believe, however, that advisers should have sufficient information to respond to the proposed questions by the time the filing is due to the Commission. Advisers should only share information about what is known at the time of filing.

Section 210(a) of the Advisers Act requires information in Form ADV–C to be publicly disclosed, unless we find that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.[70] Form ADV–C would elicit certain information regarding cybersecurity incidents, the public disclosure of which, we believe, could adversely affect advisers (and advisory clients) and funds (and their investors). For example, public disclosure may harm an adviser's or fund's ability to mitigate or remediate the cybersecurity incident, especially if the incident is ongoing. Keeping information related to a cybersecurity incident confidential may serve to guard against the premature release of sensitive information, while still allowing the Commission to have early notice of the cybersecurity incident.[71] Accordingly, our preliminary view is that Form ADV–C should be confidential given that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.[72]

We request comment on all aspects of Form ADV–C, including the following items.

45. Is IARD the appropriate system for investment advisers to file Form ADV–C with the Commission? Instead of expanding the IARD system to receive Form ADV–C filings, should the Commission utilize some other system, such as the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)? If so, please explain. What would be the comparative advantages and disadvantages and costs and benefits of utilizing a system other than IARD? What other issues, if any, should the Commission consider in connection with electronic filing?

46. Should we include any additional items or eliminate any of the items that we have proposed to include in Form ADV–C? For example, should advisers be required to disclose any technical information (*e.g.,* about specific information systems, particular vulnerabilities exploited, or methods of exploitation) about significant cybersecurity incidents? Should we modify any of the proposed items? If so, how and why?

47. Should Form ADV–C be confidential, as proposed? Alternatively, should we require public disclosure of some or all of the information included in Form ADV–C?

C. Disclosure of Cybersecurity Risks and Incidents

We are also proposing amendments to certain forms used by advisers and funds to require the disclosure of cybersecurity risks and incidents to their investors and other market participants. In particular, we propose amendments to Form ADV Part 2A for advisers and Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6 for funds. While many advisers and funds already provide disclosure about cybersecurity risks, we are updating current reporting and disclosure requirements to address cybersecurity risks and incidents more directly. These proposed amendments are designed to enhance investor protection by ensuring cybersecurity risk or incident-related information is available to increase understanding and insight into an adviser's or fund's cybersecurity history and risks. These proposed reporting and disclosure amendments, together with the proposed cybersecurity risk management rules, may also increase accountability of advisers and funds on cybersecurity issues. The proposed disclosure changes would also give the Commission and staff greater insight into cybersecurity risks affecting advisers and funds. This information would enhance the Commission's ability to oversee compliance with the proposed cybersecurity risk management rules, and to gain understanding about the specifics of the

[70] Section 210(a) of the Advisers Act states that ''[t]he information contained in any . . . report or amendment thereto filed with the Commission pursuant to any provision of this title shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.''

[71] Further, as discussed in greater detail below, we are proposing amendments to Form ADV Part 2A and certain fund registration forms that would require advisers and funds to publicly disclose significant cybersecurity incidents. Therefore, clients and investors would have access to information regarding cybersecurity incidents that they may find material, albeit on a different timeline. Further, as discussed in more detail below, the disclosure requirements we are proposing are designed to provide clients and investors with clear and meaningful disclosure regarding cybersecurity incidents in a narrative, plain-English format, while the information we are proposing to require adviser disclose on Form ADV–C may be less useful to clients and investors, given its more granular nature and the fact that it may be incomplete due to the expediency in which it must be reported.

[72] Although the Commission does not intend to make Form ADV–C filings public, the Commission or Commission staff could issue analyses and reports that are based on aggregated, non-identifying Form ADV–C data, which would otherwise be nonpublic.

policies and procedures that funds adopted under the rules.

1. Proposed Amendments to Form ADV Part 2A

We are proposing amendments to Form ADV Part 2A that are designed to provide clients and prospective clients with information regarding cybersecurity risks and incidents that could materially affect the advisory relationship. We believe the proposed amendments would improve the ability of clients and prospective clients to evaluate and understand relevant cybersecurity risks and incidents that advisers face and their potential effect on the advisers' services.

2. Cybersecurity Risks and Incidents Disclosure

The proposed amendments would add a new Item 20 entitled ''Cybersecurity Risks and Incidents'' to Form ADV's narrative brochure, or Part 2A. The brochure, which is publicly available and the primary client-facing disclosure document, contains information about the investment adviser's business practices, fees, risks, conflicts of interest, and disciplinary events. We believe the narrative format of the brochure would allow advisers to present clear and meaningful cybersecurity disclosure to their clients and prospective clients.

Advisers would be required to, in plain English, describe cybersecurity risks that could materially affect the advisory services they offer and how they assess, prioritize, and address cybersecurity risks created by the nature and scope of their business. A cybersecurity risk, regardless of whether it has led to a significant cybersecurity incident, would be material to an adviser's advisory relationship with its clients if there is a substantial likelihood that a reasonable client would consider the information important based on the total mix of facts and information.[73] The facts and circumstances relevant to determining materiality in this context may include, among other things, the likelihood and extent to which the cybersecurity risk or resulting incident: (1) Could disrupt (or has disrupted) the adviser's ability to provide services, including the duration of such a disruption; (2) could result (or has resulted) in the loss of adviser or client data, including the nature and importance of the data and the circumstances and duration in which it was compromised; and/or (3) could harm (or has harmed) clients (*e.g.,* inability to access investments, illiquidity, or exposure of confidential or sensitive personal or business information).

The proposed amendments would also require advisers to describe any cybersecurity incidents that occurred within the last two fiscal years that have significantly disrupted or degraded the adviser's ability to maintain critical operations, or that have led to the unauthorized access or use of adviser information, resulting in substantial harm to the adviser or its clients.[74] When describing these incidents in their brochures, advisers would be required to identify the entity or entities affected, when the incidents were discovered and whether they are ongoing, whether any data was stolen, altered, or accessed or used for any other unauthorized purpose, the effect of the incident on the adviser's operations, and whether the adviser, or service provider has remediated or is currently remediating the incident. This information would allow investors to make more informed decisions when deciding whether to engage or stay with an adviser.

3. Requirement To Deliver Certain Interim Brochure Amendments to Existing Clients

17 CFR 275.204–3(b) (rule 204–3(b) under the Advisers Act) does not require advisers to deliver interim brochure amendments to existing clients unless the amendment includes certain disciplinary information in response to Item 9 Part 2A or Item 3 of Part 2B.[75] We are proposing an amendment to rule 204–3(b) that would also require an adviser to deliver interim brochure amendments to existing clients promptly if the adviser adds disclosure of a cybersecurity incident to its brochure or materially revises information already disclosed in its brochure about such an incident. Given the potential effect that significant cybersecurity incidents could have on an adviser's clients—such as exposing their personal or other confidential information or resulting in losses in their accounts—time is of the essence, and we believe that requiring an adviser to promptly deliver the brochure amendment would enhance investor protection by enabling clients to take protective or remedial measures to the extent appropriate. Accordingly, the timing of the brochure amendment delivery should take into account the exigent nature of cybersecurity incidents which would generally militate toward swift delivery to clients. We also believe that requiring advisers to deliver the brochure amendment to existing clients following the occurrence of a new significant cybersecurity incident would assist investors in determining whether their engagement of that particular adviser remains appropriate and consistent with their investment objectives.

We seek comment on the Commission's proposed amendments to Form ADV Part 2A:

48. Will the proposed cybersecurity disclosures in Item 20 of Form ADV Part 2A be helpful for clients and investors? Are there additional cybersecurity disclosures we should consider adding to Item 20? Should we modify or delete any of the proposed cybersecurity disclosures?

49. Does the definition of significant adviser cybersecurity incident allow advisers to inform investors of cybersecurity risks arising from the incident while protecting the adviser and its clients from threat actors who might use that information for the current or future attacks? Does this definition allow for disclosures relevant to investors without providing so much information as to be desensitizing? Why or why not?

50. Do the required disclosures provide investors with prompt access to important information that they need in connection with the decision to engage, or continue to engage, an adviser? Why or why not?

51. We propose to require advisers to update their cybersecurity disclosures in Item 20 promptly to the extent the disclosures become materially inaccurate. Do commenters agree that the lack of disclosure regarding certain cybersecurity risks and cybersecurity incidents would render an adviser's brochure materially inaccurate? Should we only require advisers to update their cybersecurity disclosures on an annual basis (rather than an ongoing basis, as proposed)?

52. We propose to require advisers to deliver brochure amendments to

[73] *See, e.g.,* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49233 (Aug.12, 2010)], at n.35 (citing *SEC.* v. *Steadman,* 967 F.2d 636, 643 (D.C. Cir. 1992); *cf. Basic Inc.* v. *Levinson,* 485 U.S. 224, 231–232 (1988); *TSC Industries* v. *Northway, Inc.,* 426 U.S. 438, 445, 449 (1976)).

[74] We believe disclosure covering this look-back period would provide investors a short history of cybersecurity incidents affecting the adviser while not overburdening the adviser with a longer disclosure period. Further, this lookback period would foster consistency between adviser and fund disclosures regarding significant cybersecurity incidents.

[75] Even if an adviser is not required to deliver a brochure to an existing client, as a fiduciary the adviser may still be required to provide clients with similar information. If an adviser is not required to deliver an existing client a brochure, the adviser may make any required disclosures to that client by delivery of the brochure or through some other means. *See* Instruction 1 of Instructions for Part 2A of Form ADV: Preparing Your Firm Brochure.

existing clients if the adviser adds disclosure of an event, or materially revises information already disclosed about an event, that involves a cybersecurity incident in response to proposed Item 20. Is this delivery requirement appropriate? Why or why not? Are there other delivery or client-notification requirements that we should consider for advisers when updates to their cyber security disclosures are made?

53. Should advisers also be specifically required to disclose if there has *not* been a significant cybersecurity incident in its last two fiscal years? Would this disclosure assist investors in their investment decision-making? Why or why not?

54. Should the rule include a requirement to disclose whether a significant adviser cybersecurity incident is currently affecting the adviser? Why or why not? Is the look-back period of two fiscal years appropriate? Why or why not?

4. Proposed Amendments To Fund Registration Statements

Like advisers, funds would also be required to provide prospective and current investors with disclosure about significant cybersecurity incidents under our proposal. We are proposing amendments to funds' registration forms that would require a description of any significant fund cybersecurity incident that has occurred in its last two fiscal years, and that funds must tag the new information that would be included using a structured data language (specifically, Inline eXtensible Business Reporting Language or ''Inline XBRL'').[76] The proposed disclosure amendments would require that a fund disclose to investors in its registration statement whether a significant fund cybersecurity incident has or is currently affecting the fund or its service providers.[77]

Specifically, the proposed amendments would require a description of each significant fund cybersecurity incident, including the following information to the extent known: the entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered, or accessed or used for any other unauthorized purpose; the effect of the incident on the fund's operations; and whether the fund or service provider has remediated or is currently remediating the incident. The requirements for disclosure describing the incident would be similar to the information that new Form ADV–C requires, which we believe would increase compliance efficiencies for funds and their advisers.

The fund would be required to disclose any significant fund cybersecurity incident that has occurred during its last two fiscal years. We believe disclosure covering this look-back period would provide investors a short history of cybersecurity incidents affecting the fund while not overburdening the fund with a longer disclosure period.[78] We believe providing a description of a significant fund cybersecurity incident would improve the ability of shareholders and prospective shareholders to evaluate and understand relevant cybersecurity risks and incidents that a fund faces and their potential effect on the fund's operations.

In addition to providing investors with information on significant fund cybersecurity incidents, funds should consider cybersecurity risks when preparing risk disclosures in fund registration statements under the Investment Company Act and the Securities Act. Funds are currently required to disclose ''principal risks'' of investing in the fund, and if a fund determines that a cybersecurity risk is a principal risk of investing in the fund, the fund should reflect this information in its prospectus.[79] For example, a fund that has experienced a number of significant fund cybersecurity incidents in a short period of time may need to disclose heightened cybersecurity risk as a principal risk of investing in the fund. This information would allow investors to make more informed decisions when deciding whether to invest in a fund.

Funds are required to update their prospectuses so that they do not contain an untrue statement of a material fact (or omit a material fact necessary to make the disclosure not misleading).[80] To make timely disclosures of cybersecurity risks and significant fund cybersecurity incidents, a fund would amend its prospectus by filing a supplement with the Commission.[81] In addition, funds should generally include in their annual reports to shareholders a discussion of cybersecurity risks and significant fund cybersecurity incidents, to the extent that these were factors that materially affected performance of the fund over the past fiscal year.[82]

We are proposing to require all funds to tag this information about significant fund cybersecurity incidents in a structured, machine-readable data language.[83] Specifically, we are proposing to require funds to tag the disclosures in Inline XBRL in accordance with rule 405 of Regulation S–T and the EDGAR Filer Manual.[84]

[76] We are proposing amendments to Form N–1A, Form N–2, Form N–3, Form N–4, Form N–6, Form N–8B–2, and Form S–6.

[77] The proposed disclosure amendments would also require funds to disclose significant fund cybersecurity incidents affecting insurance companies (for separate accounts that are management investment companies that offer variable annuity contracts registered on Form N–3) and depositors (for separate accounts that are unit investment trusts that offer variable annuity contracts on Form N–4; unit investment trusts that offer variable life insurance contracts on Form N–6; and unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates and unit investment trusts of which a management investment company is the sponsor or depositor on Form N–8b-2 or Form S–6).

[78] The two-year period is consistent with other items in Form N–1A (for example, Item 16(e) (description of the fund's portfolio turnover), Item 17(b)(6) through (9) (management of the fund), and Item 31 (business and other connections of investment adviser). We are proposing a corresponding period for the disclosures in Part 2A of Form ADV.

[79] *See* Form N–1A, Item 4(b)(1) (narrative risk disclosure), Item 9(c) (risks), and Item 16(b) (investment strategies and risks); Form N–2, Item 8(3) (risk factors); Form N–3, Item 5 (principal risks of investing in the contract) and Item 22 (investment objectives and risks); Form N–4, Item 5 (principal risks of investing in the contract) and Item 20 (non-principal risks of investing in the contract); Form N–6, Item 5 (principal risks of investing in the contract) and Item 21 (non-principal risks of investing in the contract). UITs filing on Form N–8B–2 must disclose instead information concerning the operations of the trust (Form N–8B–2, Items 14–24).

[80] *See generally* 17 CFR 230.497 [rule 497 under the Securities Act]; section 12(a)(2) of the Securities Act (providing a civil remedy if a prospectus includes an untrue statement of a material fact or omits to state a fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading); 17 CFR 230.408 [rule 408 under the Securities Act] (requiring registrants to include, in addition to the information expressly required to be included in a registration statement, such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading).

[81] *See* 17 CFR 230.497 (open-end funds); 17 CFR 230.424 (closed-end funds).

[82] *See, e.g.,* Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 21927 (Apr. 26, 1993)], at n.15 (noting that management's discussion of fund performance requires funds to ''explain what happened during the previous fiscal year and why it happened'').

[83] Many funds are already required to tag certain registration statement disclosure items using Inline XBRL; however, UITs that register on Form N–8B–2 and file post-effective amendments on Form S–6 are not currently subject to any tagging requirements. The costs of these requirements for funds that are currently subject to tagging requirements and those that newly would be required to tag certain disclosure items are discussed in the Economic Analysis. *See* section III.D.2 *infra.*

[84] This proposed tagging requirement would be implemented by including cross-references to rule 405 of Regulation S–T in each fund registration

Continued

The proposed requirements would include block text tagging of narrative information about significant fund cybersecurity incidents, as well as detail tagging of any quantitative values disclosed within the narrative disclosures.

Many funds are already required to tag certain registration statement disclosure items using Inline XBRL.[85] Requiring Inline XBRL tagging of significant fund cybersecurity incidents for all funds would benefit investors, other market participants, and the Commission by making the disclosures more readily available and easily accessible for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML. This would enable automated extraction and analysis of granular data on significant fund cybersecurity incidents, such as the date the incident was discovered, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison across funds and time periods. An Inline XBRL requirement would facilitate other analytical benefits, such as more easily extracting/searching disclosures about significant fund cybersecurity incidents, performing targeted assessments (rather than having to manually run searches for these disclosures through entire documents), and automatically comparing these disclosures against prior periods. We believe requiring structured data for significant fund cybersecurity incidents for all funds would make cybersecurity disclosure more readily available, accessible, and comparable for investors, other market participants, and the Commission.

We seek comment on the Commission's proposed amendments to fund registration statement disclosure requirements:

55. Should there be a prospectus disclosure requirement of significant fund cybersecurity incidents for *all* registered funds? If some types of funds should be exempt, have different disclosure requirements, or not be subject to the proposed structured data requirement, which and why?

56. Will the proposed cybersecurity disclosures be helpful for shareholders and potential shareholders? Are there additional cybersecurity disclosures we should add? Should we modify or delete any of the proposed cybersecurity disclosures?

57. Does the definition of significant fund cybersecurity incident allow funds to inform investors of cybersecurity risks arising from the incident while protecting the fund from threat actors who might use that information for the current or future attacks? Does this definition allow for disclosures relevant to investors without providing so much information as to be desensitizing? Why or why not?

58. Should the rule include a requirement to disclose whether a significant fund cybersecurity incident is currently affecting the fund as proposed? Why or why not? How often should cybersecurity disclosure be updated? Is the lookback period of two fiscal years appropriate? Why or why not?

59. Should the rule include an instruction about significant fund cybersecurity incidents that may have occurred in the fund's last two fiscal years but was discovered later? Why or why not? Should the Commission provide more specific guidance or requirements on when a fund should update its disclosure to provide information about a significant fund cybersecurity incident? Should the timing or information about a significant cybersecurity incident for updated disclosure match the prompt reporting requirement for advisers on Form ADV–C? Why or why not?

60. Are there other delivery or shareholder-notification requirements that we should consider for funds when updates to their cybersecurity disclosures are made? For example, should there be an alternate website disclosure regime, similar to how proxy voting records may be disclosed, for cybersecurity incidents? Why or why not? Or alternatively or additionally, should information about significant fund cybersecurity incidents be included in funds' annual reports to shareholders, filed on Form N–CSR, or reported on Form N–CEN?

61. Should funds also be specifically required to disclose if there has *not* been a significant cybersecurity incident in its last two fiscal years? Would this disclosure assist investors in their investment decision-making? Why or why not?

62. Should the Commission provide more specific guidance or requirements on when and what cybersecurity risk funds should disclose, including when cybersecurity risk would be considered a principal risk factor? Why or why not?

63. Should we require all funds to tag significant fund cybersecurity incidents in Inline XBRL, as proposed? Why or why not?

64. Should we require funds to use a different structured data language to tag significant fund cybersecurity incident disclosures? If so, what structured data language should we require?

III. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects, including the costs and benefits, of the proposed rules and amendments. Section 3(f) of the Exchange Act, section 2(c) of the Investment Company Act, and section 202(c) of the Advisers Act provide that when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in or consistent with the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act also requires us to consider the effect that the rules would have on competition, and prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. The analysis below addresses the likely economic effects of the proposed amendments, including the anticipated and estimated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this proposal.

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form (and, as applicable, updating references to those fund registration forms in rule 11 and rule 405), by revising rule 405(b) of Regulation S–T to include the proposed significant fund cybersecurity incident disclosures, and by proposing conforming amendments to rule 485 and rule 497 under the Securities Act.

Pursuant to rule 301 of Regulation S–T, the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S–T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

[85] The Commission has adopted rules requiring funds registering on Forms N–1A, N–2, N–3, N–4, and N–6 to submit data using Inline XBRL. *See* Interactive Data to Improve Financial Reporting, Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] as corrected by Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)]; Inline XBRL Filing of Tagged Data, Release No. 33–10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)]; Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (''Variable Contract Summary Prospectus Adopting Release''); Securities Offering Reform for Closed-End Investment Companies, Release No. 33–10771 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020)]; Filing Fee Disclosure and Payment Methods Modernization, Release No. 33–10997 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

The proposed rules and amendments would provide a more specific and comprehensive framework for advisers and funds to address, report on, and disclose cybersecurity-related risks and incidents. They would directly affect advisers and funds through changes in their obligations related to cybersecurity risks. They would also directly affect investment advisers' and funds' current and prospective clients and investors. In addition, the proposed rules may affect third-party service providers to advisers and funds.

We anticipate that the main economic benefits of the proposed rules and amendments would be to enhance certain advisers' and funds' cybersecurity preparedness and thereby reduce related risks to clients and investors, to improve clients' and investors' information about advisers' and funds' cybersecurity exposures, and to enhance the Commission's ability to assess systemic risks and its oversight of advisers and funds. We expect the main economic costs of the proposed rules and amendments to be compliance costs [86] borne by investment advisers and funds—costs likely to be passed on to their respective clients and investors. We do not anticipate that these costs and benefits will be material in the aggregate, although they may have significant effects on individual advisers, funds, and their respective clients and investors.

We expect that the proposed rules and amendments would have a more significant effect on smaller advisers and smaller fund families as well as their clients and investors. Such differential impacts would likely have some effect on competition in the adviser and fund management markets, although the direction of this effect is ambiguous.[87] In addition to providing clients and investors with additional cybersecurity-related information about advisers and funds, we expect the proposed amendments to increase investors' confidence in the operational resiliency of advisers and funds and safety of their investments held through those firms. In so doing, we expect that the proposed amendments would improve economic efficiency and enhance capital formation.

Many of the benefits and costs discussed below are difficult to quantify. For example, the effectiveness of cybersecurity hygiene measures taken as a result of the proposed amendments on the probability of a cybersecurity incident and on the expected cost of such an incident, including remediation costs, is subject to numerous assumptions and unknowns, and is thus impracticable to quantify. Also, in some cases, data needed to quantify these economic effects are not currently available. For example, the Commission does not have reliable data on the incidence of cybersecurity incidents for advisers and funds. While we have attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. The Commission seeks comment on all aspects of the economic analysis, especially any data or information that would enable a quantification of the proposal's economic effects.

B. Broad Economic Considerations

While advisers and funds have private incentives to maintain some level of cybersecurity hygiene, market failures can lead the privately optimal level to be inadequate from the perspective of overall economic efficiency: Such market failures provide the economic rationale for regulatory intervention in advisers' and funds' cybersecurity practices. At the core of these market failures is asymmetric information about cybersecurity preparations and incidents as well as negative externalities to these incidents. Asymmetric information contributes to two main inefficiencies: First, because the production of cybersecurity defenses must constantly evolve, an adviser's or fund's inability to observe cyberattacks on its competitors inhibits the efficacy of its own cybersecurity preparations. Second, for a client or investor, the inability to observe an adviser's or fund's effort in cybersecurity preparation gives rise to a principal-agent problem that can contribute to an adviser or fund exerting too little effort (*i.e.,* underinvesting or underspending) on cybersecurity preparations. Moreover, because there can be substantial negative externalities related to cybersecurity incidents, advisers' and funds' private incentives to exert effort on cybersecurity preparations are likely to be lower than optimal from a societal standpoint.

In the production of cybersecurity defenses, the main input is information. In particular, information about prior attacks and their degree of success is immensely valuable in mounting effective countermeasures.[88] However, firms are naturally reluctant to share such information freely: Doing so can assist future attackers as well as lead to loss of customers, reputational harm, litigation, or regulatory scrutiny.[89] Moreover, because disclosure of such information creates a positive information externality [90]—the benefits of which accrue to society at large and which cannot be fully captured by the firm making the disclosure—an inefficient market equilibrium is likely to arise. In this market equilibrium, too little information about cybersecurity incidents is disclosed, leading to inefficiently low levels of cybersecurity defense production.[91]

Asymmetric information also contributes to a principal-agent problem. The relationship between an adviser and its client or a fund and its investor is one where the principal (the client or fund investor) relies on an agent (the investment adviser or fund complex and its management) to perform services on the principal's behalf.[92] Because principals and their agents do not have perfectly aligned preferences and goals, agents may take actions that increase their well-being at the expense of principals, thereby imposing ''agency costs'' on the principals.[93] Although private contracts between principals and agents aim to minimize such costs, they are limited in their ability to do so; this limitation provides one rationale for regulatory intervention.[94]

[86] Throughout this economic analysis, ''compliance costs'' refers to the direct and indirect costs resulting from material changes to affected registrants' business practices that may be required to comply with the proposed regulations (*e.g.,* conducting cybersecurity analysis of deployed systems, replacing outdated insecure computer software, hiring staff to implement cybersecurity improvements, renegotiating contracts with service providers, exposing aspects of secret business practices through mandated disclosures). As used here, ''compliance costs'' excludes certain administrative costs of the proposed regulations (*e.g.,* filling out and filing required forms, conducting legal reviews of mandated disclosures) subject to the Paperwork Reduction Act. These administrative costs are discussed in detail in the Paperwork Reduction Act analysis in section IV.

[87] Both costs and benefits would have differential effects. *See infra* section III.E.

[88] *See* Peter W. Singer and Allan Friedman, Cybersecurity: What Everyone Needs to Know. *Oxford University Press* 222 (2014).

[89] *See, e.g., Federal Trade Commission* v. *Equifax, Inc.* (2019), *available at https://www.ftc.gov/enforcement/cases-proceedings/172-3203/equifax-inc.*

[90] However, disclosure of this information to parties that do not obey the law creates significant negative externalities as it can facilitate attacks against those who employ similar business methods and IT systems. *See infra* section III.D.2.b (discussing the potential costs of excessive disclosure).

[91] This problem has long been recognized by policymakers leading to various efforts aimed at encouraging voluntary information sharing across firms. *See infra* section III.C.1.

[92] *See* Michael C. Jensen and William H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, 3 *Journal of Financial Economics,* 305–360 (1976) (''Jensen and Meckling'').

[93] *Id.*

[94] Such limitations can arise from un-observability or un-verifiability of actions,

Continued

In the context of cybersecurity, the principal-agent problem is one of underspending in cybersecurity—agents exerting insufficient effort toward protecting the personal information, investments, or funds of the principals from being stolen or otherwise compromised. For example, in a recent survey of financial firms, 58% of the respondents self-reported ''underspending'' on cybersecurity.[95] Several factors can contribute to this underspending. Agents (*i.e.,* advisers and funds) may not be able to credibly signal to their principals (*i.e.,* clients or investors) that they are better at addressing cybersecurity risks than their peers, reducing their incentives to bear such costs.[96] At the same time, agents who do not bear the full cost of a cybersecurity failure (*e.g.,* losses of their customers' information or assets) will prefer to avoid bearing costs—such as elaborate cybersecurity practices—the benefits of which accrue in large part to principals (*i.e.,* clients and investors).

Agents' reputation motives—the fear of market-imposed loss of future profits—should generally work against the tendency for agents to underinvest in cybersecurity measures. However, for smaller agents—who do not enjoy economies of scale or scope, and generally have less valuable brands—the cost of implementing robust cybersecurity measures will be relatively high, while their reputation motives will be more limited. Thus, smaller agents can be expected to be especially prone to underinvestment.

Even in the absence of agency problems, advisers and funds may still underinvest in cybersecurity due to negative externalities or moral hazard. In the context of cybersecurity, negative externalities arise because a disruption to the operation or financial condition of one financial entity can have significant negative repercussions on the financial system broadly.[97] For example, a cybersecurity incident at a large money market fund that affects its ability to process redemptions could disrupt the fund's shareholders' ability to access cash needed to satisfy other obligations, potentially leading those shareholders to default, which, in turn, could trigger further defaults by those shareholders' creditors. Alternatively, a cybersecurity incident may adversely affect market confidence and curtail economic activity through a confidence channel.[98] As such costs would not be internalized by advisers and funds, advisers and funds would be expected to underinvest in measures aimed at avoiding such costs. In addition, advisers and funds may also underinvest in their cybersecurity measures due to moral hazard from expectations of government support.[99] For example, a large fund may realize that it is an attractive target for sophisticated state actors aiming to disrupt the U.S. financial system. Protection against such ''advanced persistent threats'' [100] from sophisticated actors is costly.[101] A belief that such an attack would be met with government support could lead to moral hazard where the fund underinvests in defenses aimed at countering this threat.

The proposed amendments could mitigate these problems in several ways. First, establishing explicit requirements for cybersecurity policies and procedures could help ensure that investment advisers and funds devote a certain minimum amount of effort toward cybersecurity readiness. Second, the proposed disclosure and regulatory reporting requirements could help alleviate the information asymmetry problems by providing current and prospective investors and clients, third parties (*e.g.,* fund rating services), and regulators with more information about funds' and advisers' cybersecurity exposure. The publicly disclosed information could in turn be used by investors, clients, and third parties to screen and monitor funds and investment advisers, while the confidential regulatory reports could be used by regulators to inform industry and law enforcement about ongoing threats. Finally, by reducing uncertainty about the effectiveness of funds' and investment advisers' cybersecurity measures, the proposed amendments could help level the competitive playing field for funds and advisers by simplifying prospective investors' and clients' decision making.[102] By addressing important market imperfections, the proposed amendments could mitigate underinvestment in cybersecurity and improve the adviser and fund industry's ability to produce effective cybersecurity defenses through better information sharing, which could in turn lead to improved economic efficiency.

The effectiveness of the proposed amendments at mitigating the aforementioned problems would depend on several factors. It would depend on the extent to which the proposed amendments materially affect registrants' policies and procedures and disclosures. Insofar as the new requirements affect registrants' policies and procedures, the effectiveness of the proposed amendments would also depend on the extent to which the actions they induce alleviate cybersecurity underinvestment. The effectiveness of the proposed amendments would also depend on the extent to which the proposed disclosure requirements provide useful

transactions costs associated with including numerous contingencies in contracts, or bounded rationality in the design of contracts. *See e.g.* Jean Tirole, Cognition and Incomplete Contracts, 99 (1) *American Economic Review,* 265–94 (Mar. 2009) (discussing a relatively modern treatment of these issues) (''Tirole'').

[95] Institute of International Finance, *IIF/McKinsey Cyber Resilience Survey* (Mar. 2020), *available at https://www.iif.com/Portals/0/Files/content/cyber_resilience_survey_3.20.2020_print.pdf* 2020) (''IIF/McKinsey Report''). A total of 27 companies participated in the survey, with 23 having a global footprint. Approximately half of respondents were European or U.S. Globally Systemically Important Banks (G–SIBs).

[96] *See* Sanford J. Grossman, The Informational Role of Warranties and Private Disclosure about Product Quality, 24 (3) *The Journal of Law and Economics* 461–83 (Dec. 1981); *see also* Michael Spence, Competitive and Optimal Responses to Signals: An Analysis of Efficiency and Distribution, 7 (3) *Journal of Economic Theory* 296–332 (Mar. 1, 1974); G.A. Akerlof, The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism, 84 (3) *The Quarterly Journal of Economics* 488–500 (Aug. 1970).

[97] *See* Anil K. Kashyap and Anne Wetherilt, Some Principles for Regulating Cyber Risk, *AEA Papers and Proceedings* 109, 482–487 (May 2019).

[98] *Id.*

[99] It has long been noted that it is difficult for governments to commit credibly to not providing support to entities that are seen as critical to the functioning of the financial system, resulting in problems of moral hazard. *See, e.g.,* Walter Bagehot, *Lombard Street,* King (1873). Historically, banking entities seen as ''too big to fail'' or ''too interconnected to fail'' have been the principal recipients of such government support. Since the financial crisis of 2007–2009, non-bank financial institutions (such as investment banks), money market funds, and insurance companies, as well as specific markets such as the repurchase market have also benefited. *See, e.g.,* Gary B. Gorton, Slapped by the Invisible Hand: The Panic of 2007, *Oxford University Press* (2010). *See also* Viral V. Acharya, Deniz Anginer, and A. Joseph Warburton, The End of Market Discipline? Investor Expectations of Implicit Government Guarantees, *SSRN Scholarly Paper. Rochester, NY: Social Science Research Network* (May 1, 2016).

[100] Advanced persistent threat (APT) refers to sophisticated cyberattacks by hostile organizations with the goal of: Gaining access to defense, financial and other targeted information from governments, corporations and individuals; maintaining a foothold in these environments to enable future use and control; and modifying data to disrupt performance in their targets. *See* Michael K, Daly, The Advanced Persistent Threat (or Informationized Force Operations), Usenix LISA 09 (Nov. 4, 2009), *available at https://www.usenix.org/legacy/events/lisa09/tech/slides/daly.pdf.*

[101] *See* Nikos Virvilis, and Dimitris Gritzalis, The Big Four—What We Did Wrong in Advanced Persistent Threat Detection? *2013 International Conference on Availability, Reliability and Security,* 248–54 (2013).

[102] By analogy, in the absence of rigorous airline safety regulation, shopping for airline tickets would be considerably more complex as one would need to consider not only each airline's price and level of service, but also the adequacy of each airline's maintenance regime, the age of its fleet, and the training of its pilots.

information to investors, clients, third parties, and regulators.[103]

C. Baseline

The market risks and practices, regulation, and market structure relevant to the affected parties in place today form the baseline for our economic analysis. The parties directly affected by the proposed amendments are advisers that are registered or required to be registered with the Commission and funds. In addition, the proposed amendments would indirectly affect current and prospective clients of such advisers (including private funds) and investors in such funds as well as certain service providers to advisers and funds. Finally, these amendments could also affect issuers of financial assets whose access to and cost of capital could change because of the proposed amendments' effects on the asset management markets.

1. Cybersecurity Risks and Practices

With the widespread adoption of internet-based products and services over the last two decades, all businesses have had to address issues of cybersecurity. For financial services firms, the stakes are particularly high—it is where the money is. Cybersecurity threat intelligence surveys consistently find the financial sector to be one of—if not the most—attacked industry,[104] and remediation costs for such incidents can be substantial.[105] The financial services sector has also been at the forefront of digitization and now represents one the most digitally mature sectors of the economy.[106] Not surprisingly, it is also one of the biggest spenders on cybersecurity measures: A recent survey found that non-bank financial firms spent an average of approximately 0.5% of revenues—or $2,348/employee—on cybersecurity.[107]

The ubiquity and rising costs of cybercrime[108] along with firm's increasingly costly efforts to prevent it[109] has created a boom in the cybersecurity industry[110] and led to the development of a numerous technologies, standards, and industry noted ''best practices'' aimed at mitigating cybersecurity threats. Many of these developments— multi-factor authentication, HTTPS, and user-access control—are so widely deployed as to be in common parlance. Among practitioners (chief technology officers, chief information officers, chief security officers (''CISOs'') and their staffs), best practice frameworks such as Carnegie Mellon University's Cyber Resilience Review,[111] the NIST Framework,[112] and similar offerings from cybersecurity consultants and product vendors are now frequently employed to assess and address institutional cybersecurity preparedness. Such frameworks cover the gamut of cybersecurity, including: IT asset management, controls, change management, vulnerability management, incident management, continuity of operations, risk management, dependencies on third parties, training, and information sharing. In recent years, company boards and executive management teams have been paying more attention to many of these areas.[113]

While spending on cybersecurity measures in the financial services industry is considerable, it may nonetheless be inadequate—even in the estimation of financial firms themselves: According to one recent survey, 58% of financial firms self-reported ''underspending'' on cybersecurity measures.[114] And while adoption of cybersecurity best practices has been accelerating overall, many firms continue to lag in their adoption.[115] While surveys of financial services firms are suggestive, the true extent of advisers' and funds' underspending—and of failing to adopt industry-accepted cybersecurity ''best practices''—is impracticable to quantify.[116]

Similarly, it is impracticable to quantify the adequacy of advisers' and funds' information sharing arrangements.[117] The value of such information sharing has long been recognized. In 1998, Presidential Decision Directive 63 established industry-based information sharing and analysis centers (''ISACs'') to promote the disclosure and sharing of cybersecurity information among firms.[118] The FS–ISAC provides financial firms with such a forum.[119] However, observers have questioned the efficacy of these information-sharing partnerships,[120] while the U.S. Government has continued in attempts to further such efforts. For example, President Obama's 2015 Executive Order, ''Promoting Private Sector Cybersecurity Information Sharing'' aimed ''to encourage the voluntary formation of [information sharing organizations], to establish mechanisms to continually improve the capabilities and functions of these organizations, and to better allow these organizations to partner with the Federal Government on a voluntary basis.''[121] Although the Commission does not have data on the extent of advisers' and funds' use of such forums or their efficacy, surveys of securities firms conducted by FINRA suggest that there is considerable variation in firms' willingness to share information about cybersecurity threats voluntarily, with larger firms being

[103] Similar arguments have been put forward with respect to disclosure's utility in predicting adviser fraud. *See, e.g.,* Stephen Dimmock and William Gerken, Predicting Fraud by Investment Managers, 105 (1) *Journal of Financial Economics,* 153–173 (2012).

[104] *See, e.g.,* IBM, *X-Force Threat Intelligence Index 2021* (2021), *available at https://www.ibm.com/security/data-breach/threat-intelligence.*

[105] *See, e.g., supra* footnote 6 (Cost of Data Breach Report) and accompanying text (noting the average cost of a data breach in the financial industry in the United States is $5.72 million).

[106] *See* BCG Global, *Digital Maturity Is Paying Off* (Nov. 6, 2020), *available at https://www.bcg.com/publications/2018/digital-maturity-is-paying-off.*

[107] Deloitte LLP, *Reshaping the Cybersecurity Landscape, Deloitte Insights* (accessed Nov. 10, 2021), *available at https://www2.deloitte.com/us/en/insights/industry/financial-services/cybersecurity-maturity-financial-institutions-cyber-risk.html* (''Reshaping the Cybersecurity Landscape'').

[108] *See supra* footnote 5 (FBI 2020 Internet Crime Report, noting that cybercrime victims lost approximately $4.2 billion in 2020).

[109] *See* Office of Financial Research, *Annual Report to Congress* (2021), *available at https://www.financialresearch.gov/annual-reports/files/OFR-Annual-Report-2021.pdf.*

[110] VentureBeat, *The Cybersecurity Industry Is Burning—But VCs Don't Care* (Sept. 2, 2021)), *available at https://venturebeat.com/2021/09/02/the-cybersecurity-industry-is-burning-and-vcs-dont-care/* (''VentureBeat'').

[111] U.S. Department of Homeland Security Cybersecurity and Infrastructure Security Agency, *CRR: Method Description and Self-Assessment User Guide* (Apr. 2020), *available at https://www.cisa.gov/sites/default/files/publications/2_CRR%204.0_Self-Assessment_User_Guide_April_2020.pdf.*

[112] *See supra* footnote 24.

[113] *See* Reshaping the Cybersecurity Landscape, *supra* footnote 107.

[114] *See* IIF/McKinsey Report, *supra* footnote 95.

[115] *See* VentureBeat, *supra* footnote 110.

[116] As noted in section III.B, the quality of cybersecurity measures is difficult to quantify. Moreover, the cybersecurity measures being employed by registrants are not generally observable. Consequently, it is not practicable to estimate the adequacy of measures currently being employed by registrants.

[117] The Commission does not currently collect data from registrants regarding the presence of such arrangements. We are also not aware of any third-party data providers that tabulate this information.

[118] *See* President Decision Directive/NSC–63, Critical Infrastructure Protection (May 22, 1998); Presidential Decision Directive 63 on Critical Infrastructure Protection: Sector Coordinators, 98 FR 41804 (Aug. 5, 1998) (notice and request for expressions of interest). *See also* National Council of ISACs, *available at https://www.nationalisacs.org.*

[119] More information about the FS–ISAC is available at *https://www.fsisac.com.*

[120] Denise E. Zheng and James A. Lewis, Cyber Threat Information Sharing, *Center for Strategic and International Studies* 62 (2015).

[121] *See* Executive Order 13691, Promoting Private Sector Cybersecurity Information Sharing (Feb. 13, 2015).

more likely to do so.[122] Other surveys paint a similar picture; a recent survey of financial firms found that while recognition of the value of information-sharing arrangements is widespread, a majority of firms report hesitance to participate due to regulatory restrictions or privacy concerns.[123]

2. Regulation

As discussed in greater detail in section I.B above, although existing rules and regulations do not impose explicit cybersecurity requirements on advisers and funds, advisers' duties as fiduciaries, as well as several existing rules and regulations applicable to advisers and funds indirectly implicate cybersecurity. As fiduciaries, advisers are required to act in the best interest of their clients at all times.[124] This fiduciary obligation includes taking steps to minimize cybersecurity risks that could lead to significant business disruptions or a loss or misuse of client data.[125] Additionally, the Advisers Act compliance rule requires advisers to consider their fiduciary and regulatory obligations and formulate policies and procedures to address them.[126] While the Advisers Act compliance rule does not enumerate specific cybersecurity elements that an adviser must include in its compliance program,[127] the Commission has previously stated that advisers should consider factors creating risk exposure for the firm and its clients and design policies and procedures that address those risks.[128] As the potential for a cybersecurity incident to create significant operational disruptions is well understood at this point, we understand that larger advisers with significant IT infrastructures are assessing cybersecurity risks when developing their compliance policies and procedures.[129]

One potential risk for an adviser's client stemming from the cybersecurity threats faced by the adviser, is that a cybersecurity incident at the adviser could lead to the client's information[130] being compromised or the loss of the client's assets. Nominally, the risk of outright loss should be limited for assets subject to 17 CFR 275.206(4)–2 (the ''Custody Rule''),[131] which are—by effect of said rule—generally held by ''qualified custodians.'' Qualified custodians are typically large financial institutions.[132] Such financial institutions generally enjoy significant economies of scale, have large franchise (and reputation) values, and are subject to numerous additional regulatory requirements.[133] For these reasons, cybersecurity protections provided by qualified custodians may be well-developed, and could help mitigate the risk of outright loss of client funds and securities in advisers' custody.[134]

Although protection provided by qualified custodians can mitigate risk to certain client assets to some extent, they cannot replace cybersecurity hygiene at the adviser level. As an adviser's ''custody'' of client assets implies a degree of control over those assets, compromise of adviser's systems—or the adviser's service providers' systems—could lead to unauthorized actions being taken with respect to those assets—including assets maintained with qualified custodians. Moreover, as observed by Commission staff, advisers may fail to realize that they have ''custody'' of client funds and securities, and may not place these assets with a qualified custodian.[135] Such problems can occur when, for example, an adviser holds login credentials to clients' accounts or when the adviser or a related person of the adviser serves as trustee of, or has been granted power of attorney for, client accounts.[136]

The Investment Company Act compliance rule requires a fund to adopt and implement written policies and procedures reasonably designed to prevent violations of the Federal securities laws by the fund and named service providers.[137] We believe that operating a fund today generally requires considerable IT sophistication, especially in the case of open-end funds.[138] Therefore, we believe that all but the smallest funds likely take into account cybersecurity risks when developing their compliance policies and procedures under the Investment Company Act compliance rule.

A number of other Commission rules also implicate cybersecurity. Regulation S–P requires advisers and funds to adopt written policies and procedures that address protection of customer records and information, which likely would include reasonably designed cybersecurity policies and procedures.[139] In addition, advisers and

[122] FINRA, *Report on Cybersecurity Practices* (Feb. 2015), *available at https://www.finra.org/sites/default/files/2020-07/2015-report-on-cybersecurity-practices.pdf.* Survey respondents included large investment banks, clearing firms, online brokerages, high-frequency traders, and independent dealers. Thus, the results should be taken as suggestive of practices that may be in place at advisers and funds.

[123] *See* Reshaping the Cybersecurity Landscape, *supra* footnote 107. Survey respondents consisted of CISOs (or equivalent) of 53 members of the FS–ISAC. Of the respondents, twenty-four reported being in the retail/corporate banking sector, twenty reported being in the consumer/financial services (non-banking) sector, and seventeen reported being in the insurance sector. Other respondents included IT service providers, financial utilities, trade associations, and credit unions. Some respondents reported being in multiple sectors.

[124] *See supra* footnote 9.

[125] *See supra* section I.B (discussing fiduciary obligations).

[126] *See supra* section I.B (discussing Advisers Act compliance rule).

[127] According to the rule, an adviser should identify conflicts of interest and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular operations. *See supra* footnote 10 and accompanying text.

[128] *See* Compliance Program Release, *supra* footnote 10, at n.22 and accompanying text.

[129] *See, e.g.,* Chuck Seets, Jamie Smith, and Steve Klemash, What Companies Are Disclosing About Cybersecurity Risk and Oversight, *The Harvard Law School Forum on Corporate Governance* (blog), (Aug. 25, 2020), *available at https://corpgov.law.harvard.edu/2020/08/25/what-companies-are-disclosing-about-cybersecurity-risk-and-oversight/* (finding that 100 percent of Fortune 100 companies list cybersecurity as a risk factor in 2020 SEC disclosures, and 93 percent referenced efforts to mitigate such risks).

[130] Advisers may possess a wide range of potentially sensitive information relating to their clients, including personally identifiable information, portfolio composition, transaction histories, and confidential correspondence.

[131] The Custody Rule applies only to client funds and securities. 17 CFR 275.206(4)–2. In practice, staff has observed that many advisers treat all assets in the same way.

[132] 17 CFR 275.206(4)–2(a) and (d). A qualified custodian can be a bank, broker-dealer, futures commission merchant, or certain foreign financial institutions. The qualified custodian maintains client's funds and securities in a separate account for each client. Alternatively, the adviser's clients' funds and securities can be held in an account under the adviser's name as agent or trustee for the clients.

[133] *See, e.g., Interagency Guidelines Establishing Information Security Standards,* 12 CFR 225 Appendix F; *see also* Information Technology Risk Examination (''InTREx'') Program, *FDIC Financial Institution Letter* FIL–43–2016 (June 30, 2016).

[134] *See id.* The qualified custodian industry is dominated by large U.S. banking entities which are subject to various regulations, guidance, and examinations relating to cybersecurity.

[135] *See* SEC, EXAMS Risk Alert, Significant Deficiencies Involving Adviser Custody and Safety of Client Assets, (Mar. 4, 2013), *available at https://www.sec.gov/about/offices/ocie/custody-risk-alert.pdf.*

[136] *Id.*

[137] 17 CFR 270.38a–1. The Investment Company Act compliance rule also requires the fund to: (1) Designate a CCO responsible for administering the policies and procedures, subject to certain requirements, including providing the fund's board with an annual report; and (2) review the adequacy of the policies and procedures and the effectiveness of their implementation at least annually.

[138] The logistics of dealing with daily redemption requests, producing daily NAVs, and complying with the Commission's N–PORT filing requirements and liquidity rule (rule 22e–4 under the Investment Company Act) are not feasible without significant investments in IT infrastructure. *See, e.g.,* Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)], at 360.

[139] *See* Regulation S–P Release, *supra* footnote 14; *see also* Disposal of Consumer Report Information Release, *supra* footnote 14 (requiring written policies and procedures under Regulation S–P). *See* Compliance Program Release, *supra* footnote 10 (stating expectation that policies and procedures would address safeguards for the privacy protection of client records and information and noting the applicability of Regulation S–P).

funds subject to Regulation S–ID must develop and implement a written identity theft program that includes policies and procedures to identify and detect relevant red flags.[140] Compliance with one or both of the aforementioned requirements requires certain reasonably designed cybersecurity policies and procedures to be in place.[141]

Some affected registrants may also be subject to other regulators' rules implicating cybersecurity. We understand that private funds may be subject to the Federal Trade Commission's recently amended 16 CFR 314.1 through 16 CFR 314.5 (Standards for Safeguarding Customer Information (''FTC Safeguards Rule'')) that contains a number of modifications to the existing rule with respect to data security requirements to protect customer financial information.[142] To the extent that a private fund subject to the FTC Safeguards Rule is managed by an adviser that is registered with the Commission, our proposed rule would result in some overlapping regulatory requirements.[143] As recently amended, the FTC Safeguards Rule generally requires financial institutions to develop, implement, and maintain a comprehensive information security program that consists of the administrative, technical, and physical safeguards the financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.[144] The key provision of the rule is the requirement to design and implement a comprehensive information security program with safeguards for access controls, data inventory and classification, encryption, secure development practices, authentication, information disposal procedures, change management, testing, and incident response.[145] It also requires written periodic risk assessments, and that the safeguards' be designed so as to address risks identified through such assessments.[146] In addition, it requires financial institutions to take reasonable steps to select and retain service providers capable of maintaining appropriate safeguards for customer information and require those service providers by contract to implement and maintain such safeguards.[147] Although narrower in scope than the rules being proposed here [148] and generally more prescriptive,[149] the FTC Safeguards Rule provisions are congruent with the requirements for cybersecurity policies and procedures,[150] annual review,[151] and board oversight being proposed here.[152] The FTC Safeguards Rule does not currently include disclosure, regulatory reporting, or recordkeeping requirements.[153]

3. Market Structure

Advisers that would be subject to the proposed rules provide a variety of services to their clients, including: Financial planning advice, portfolio management, pension consulting, selecting other advisers, publication of periodicals and newsletters, security rating and pricing, market timing, and educational seminars.[154] Although advisers can expose clients to cybersecurity threats through any of these activities, the potential for harm can vary widely across advisers. A cybersecurity breach at an adviser that only offers advice on wealth allocation strategies may not have a significant negative effect on its clients: Such adviser may not hold much client information beyond address, payment details, and the client's overall financial condition. On the other hand, a breach at an adviser that performs portfolio management services exposes clients to much greater risk: Such an adviser will not only hold client personally identifiable information and records, but also typically have some degree of control over client assets. In addition, even a brief disruption to the services offered by advisers performing portfolio management services (*e.g.,* a ransomware attack) could have large negative repercussions on the adviser's clients (*e.g.,* inability to access funds and securities).

Based on Form ADV filings up to October 31, 2021, there were 14,774 advisers with a total of $113 trillion in assets under management.[155] Practically all (97%) of the advisers reported providing portfolio management services to their clients.[156] Over half (55%) reported having custody [157] of clients' cash or securities either directly or through a related person with client funds in custody totaling $39 trillion.[158]

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[140] *See* Identity Theft Release, *supra* footnote 16.

[141] The scope of the Regulation S–ID differs from Regulation S–P. Regulation S–P applies to the protection of customer records and information by advisers and funds, whereas Regulation S–ID applies to funds and advisers that meet the definition of ''financial institution'' or ''creditor'' that offers or maintains ''covered accounts.'' *See* Regulation S–P Release, *supra* footnote 14; *see also* Identity Theft Release, *supra* footnote 16 ( ).

[142] *See* Federal Trade Commission, *Standards for Safeguarding Customer Information* (Oct. 27, 2021) [86 FR 70272 (Dec. 9, 2021)]. Although the amended rule became formally effective on January 10, 2022, a number of detailed measures must generally be adopted by December 9, 2022. *Id.*

[143] The Gramm Leach Bliley Act (''GLBA'') delegates the authority to create privacy and security standards to specified financial regulators. Public Law 106–102, 113 Stat. 1338, §§ 501–527 (1999) (codified at 15 U.S.C. 6801 *et seq.*). The GLBA gives the FTC the regulatory authority for financial institutions that are not subject to the jurisdiction of any other regulator under that Act. *Id.* (defining ''financial institution'' to mean ''any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956'').

[144] 16 CFR 314.2(c).

[145] 16 CFR 314.4(c), (d), and (h). These ''safeguard'' elements of the FTC rule are effectively more prescriptive versions of the User Security and Access, Information Protection, and Cybersecurity Incident Response and Recovery elements being proposed here. *See supra* sections II.A.1.b, II.A.1.c, and II.A.1.e.

[146] 16 CFR 314.4(b), (c). These elements of the FTC rule are analogous to the Risk Assessment and Threat and Vulnerability Management elements being proposed here. *See supra* sections II.A.1.a and II.A.1.d.

[147] 16 CFR 314.4(d). Similar to the rules being proposed here, the FTC Safeguards Rule requires oversight of third-party service providers. *See* proposed rules 38a–2(a)(3)(ii) and 206(4)–9(a)(3)(ii).

[148] The scope of the FTC Safeguards Rule is limited to protecting customer information. 16 CFR 314.3(a).

[149] The FTC Safeguards Rule imposes various technical requirements such as the use of encryption and multi-factor authentication. 16 CFR 314.4(c)(3) and (c)(5).

[150] *See supra* footnotes 145 and 146.

[151] *See* proposed rule 38a–2(b) and 16 CFR 314.4(i); *see also supra* section II.A.2.

[152] *See* proposed rule 38a–2(c) and 16 CFR 314.4(i); *see also supra* section II.A.3.

[153] The FTC, however, issued a supplemental notice of proposed rulemaking requesting comment on further amending the Safeguards Rule to require regulatory reporting of certain security events. *See* FTC, Standards for Safeguarding Customer Information (Oct. 27, 2021) [86 FR 70062 (Dec. 9, 2021)].

[154] *See* Form ADV.

[155] Broadly, regulatory assets under management is the current value of assets in securities portfolios for which the adviser provides continuous and regular supervisory or management services. *See* Form ADV, Item 5F.

[156] Form ADV, Items 5G(2–5) (as of Oct. 4, 2021).

[157] Here, ''custody'' means ''holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them.'' An adviser also has ''custody'' if ''a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services [the adviser] provide[s] to clients.'' *See* 17 CFR 275.206(4)–2(d)(2).

[158] Form ADV, Items 9A and 9B (as of Oct. 4, 2021).

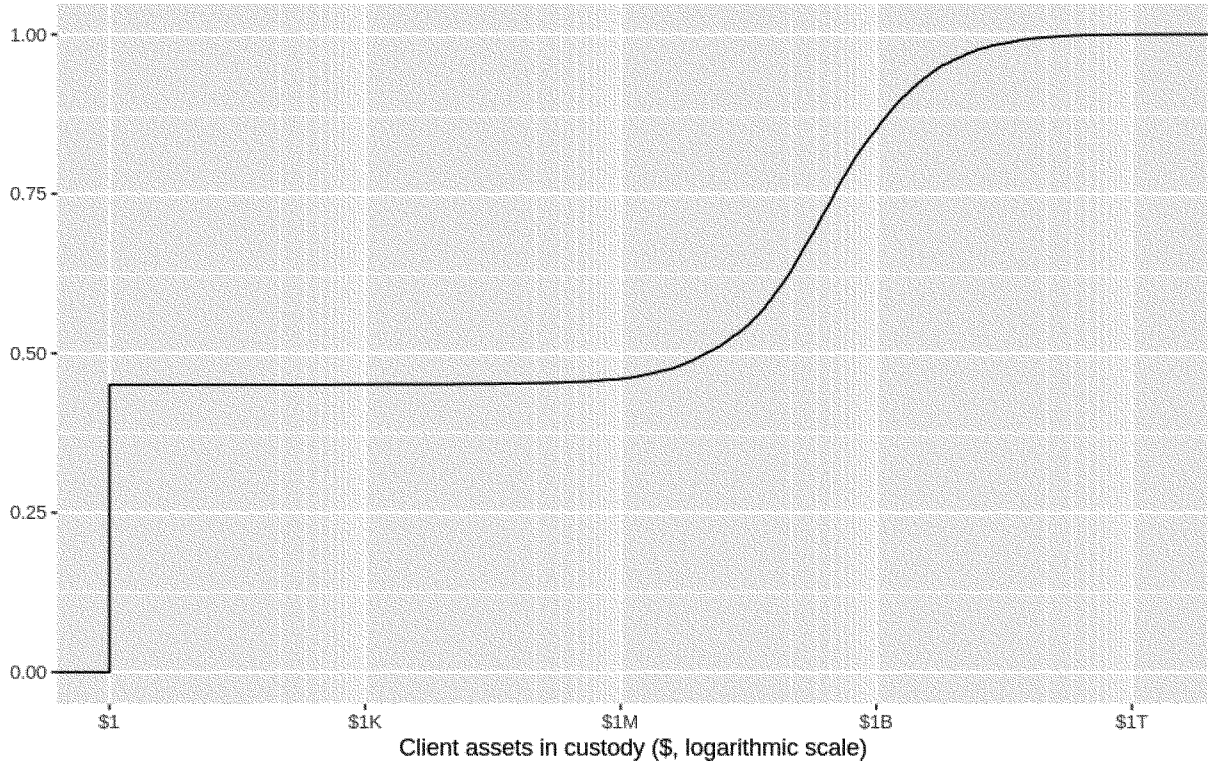

Figure 1: Cumulative distribution of client assets for which advisers have "custody" as defined in rule 206(4)-2. Plotted is the fraction of all advisers (y-axis) having less than the given amount of client assets in custody either directly or through a related person (x-axis, logarithmic scale). Data source: Form ADV filings.

Figure 1 plots the distribution of client assets for which advisers have custody as defined in rule 206(4)–2. The distribution is highly skewed: Four advisers have custody over more than $1 trillion, while half of advisers have custody over less than $10 million. Approximately two thirds of advisers have custody of over $100 million. Many such advisers are quite small, with half reporting fewer than 15 employees.[159] Nearly all (97%) advisers rely on an unrelated person to act as a qualified custodian for customer assets.[160] The qualified custodian industry is dominated by a small number of large U.S. entities.[161]

The funds that would be directly subject to the proposed rules include open-end funds, registered closed-end funds, business development companies, and unit investment trusts.[162] Table 1 presents the breakdown of funds registered with the Commission in 2020. In 2020, there were 15,750 registered funds, with over $25 trillion in net assets.[163] The vast majority of the registered funds (13,248) are open-end funds. Many of the funds (82%) are part of a fund family. There are 290 such fund families. As shown in Figure 2, fund families exhibit considerable variation in size: Some families consist of hundreds of funds, while others consist of just a handful of funds, with the median family consisting of 10 funds. The larger-than-median families represented the majority (10,389) of funds, and nearly all ($23 trillion) industry NAV.[164]

[159] Form ADV, Item 5A (as of Oct. 4, 2021).

[160] Form ADV, Item 9D (as of Oct. 4, 2021).

[161] Deloitte, *The Evolution of a Core Financial Service Custodian & Depository Banks* (2019), *available at https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/lu-the-evolution-of-a-core-financial-service.pdf*. *See also* Eva Su, *Digital Assets and SEC Regulation* (*CRS Report No.* R46208) (updated June 23, 2021), *available at https://crsreports.congress.gov/product/pdf/R/R46208/5* (stating that four large banks service around $114 trillion of global assets under custody).

[162] *See supra* footnote 22.

[163] This amount represents a subset of the $113 trillion of assets under management of advisers. *See supra* footnote 155 and accompanying text.

[164] Form N–CEN. ''Family of investment companies'' means, except for insurance company separate accounts, any two or more registered investment companies that (1) share the same investment adviser or principal underwriter, and (2) hold themselves out to investors as related companies for purposes of investment and investor services.

TABLE 1—FUNDS SUBJECT TO PROPOSED RULE AMENDMENTS, SUMMARY STATISTICS

[For each type of fund, this table presents estimates of the number, net asset value (NAV), and the percentage of funds belonging to some fund family. It also presents the number and NAV of each type of fund that is part of one of the larger (above median) fund families. Data sources: 2020 N–1A, N–2, N–3, N–4, N–6, N–8B–2, S6, and N–CEN filings, Division of Investment Management Investment Company Series and Class Information (2020),[a] Division of Investment Management Business Development Company Report (2020).[b]]

Fund type	Number of funds	NAV[c] ($billion)	In family[d] (%)	Larger families	
				Number of funds[b]	NAV ($billion)
Open-End[e]	13,248	$24,837	82	9,944	$22,613
Closed-End[f]	691	321	81	431	221
BDC[g]	95	135	.....	.....	.....
UIT[h]	1,716	.....	.....	.....	.....
Total	15,750	25,378	82	10,389	23,052

[a] SEC, *Commission Investment Company Series and Class Information, available at https://www.sec.gov/open/datasets-investment_company.html.*
[b] SEC, *Business Development Company Report, available at https://www.sec.gov/open/datasets-bdc.html.*
[c] NAV totals based on year 2020 Form N–CEN filings (as of Oct. 4, 2021) and Business Development Company Report.
[d] Family affiliation information is from Form N–CEN filings. Note that there are minor discrepancies in estimates of the total number of funds based on N–CEN filings and estimates (reported elsewhere in this table) based on fund registration forms.
[e] Form N–1A filers; includes all open-end funds, including ETFs registered on Form N–1A.
[f] Form N–2 filers not classified as BDCs.
[g] Form N–2 filers classified as BDCs.
[h] Form N–3, N–4, N–6, N–8B–2, and S–6 filers.

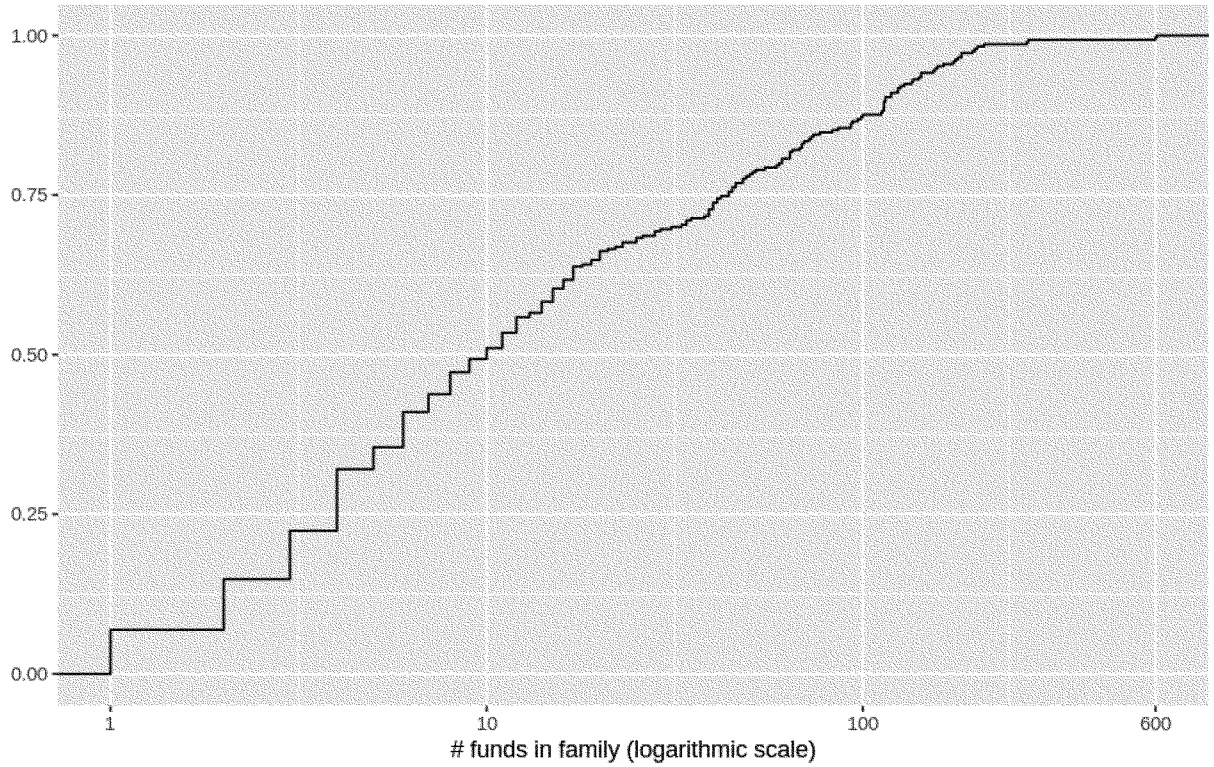

Figure 2: Cumulative distribution of fund family size. Plotted is the fraction of fund families (y-axis) having less than a given number of funds (x-axis, logarithmic scale). The plot shows that 50% of fund families have 10 or more funds.

Although private funds would not be directly subject to the proposed rules, they would be indirectly affected through the proposed provisions on advisers. Approximately one third of advisers (5,231) report advising private funds.[165] Private funds have grown dramatically over the past decade. As plotted in Figure 3, advisers' reported assets under management of private funds more than doubled from $8 trillion to $17 trillion, while the reported number of private funds grew from 24 thousand to 44 thousand.[166]

[165] Form ADV, Item 7B (as of Oct. 4, 2021).

[166] Form ADV, Schedule D (as of Sept. 30, 2021).

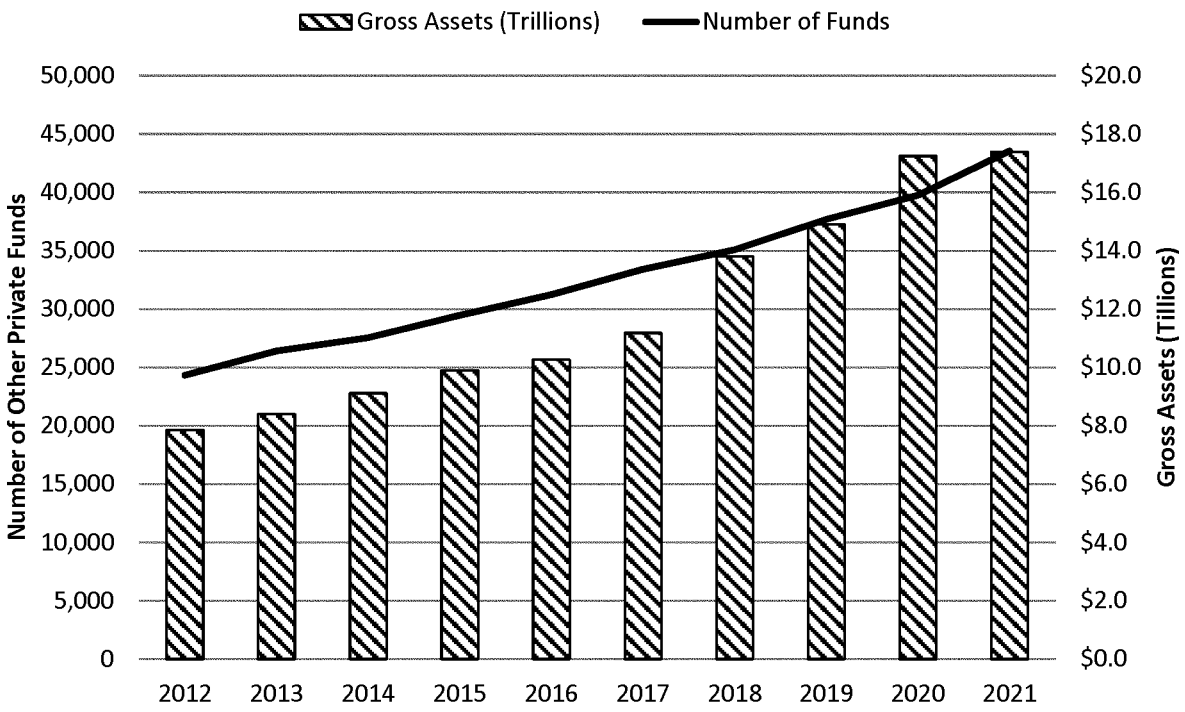

Figure 3: Private funds reported by advisers. Source: Form ADV filings, Schedule D.

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D. Benefits and Costs of the Proposed Rule and Form Amendments

The proposed rules would impose four types of new requirements on advisers and funds: (1) Cybersecurity policies and procedures; (2) cybersecurity disclosures; (3) regulatory reporting of cybersecurity incidents; and (4) recordkeeping of cybersecurity incidents. The new requirements would be substantially similar for both advisers and funds. In this section, we consider the benefits and costs of each of these in turn.[167]

1. Cybersecurity Policies and Procedures

The Commission's proposed risk management rules[168] would require all advisers and funds registered with the Commission to implement reasonably designed cybersecurity policies and procedures addressing key elements of cybersecurity preparedness: (1) Risk assessment, including assessment of risks associated with certain service providers, oversight of such providers, and appropriate written contracts with such providers; (2) user security and access; (3) information protection; (4) cybersecurity threat and vulnerability management; and (5) cybersecurity incident response and recovery.[169] Advisers and funds would need to review these policies and procedures at least annually and to prepare a written report of the review's findings; for funds the policies and reviews would be subject to board oversight.[170]

As discussed in section III.C.2, it can be argued that the fiduciary obligations of advisers, existing rules applicable to advisers and funds, the modern technological context, and commonly employed best practices that forms the baseline, may require funds and advisers to implement reasonably designed cybersecurity policies and procedures.[171] However, as noted earlier, Commission staff has observed that some funds and advisers practices in the cybersecurity area raise concerns, and there is reason[172] and evidence[173] to suggest that underinvestment in cybersecurity may be a fairly widespread problem.

a. Benefits

We believe that the Commission's proposed risk management rules would, by imposing comprehensive, explicit requirements to address key elements of cybersecurity preparedness, generally improve the cybersecurity policies and procedures of advisers and funds, and in so doing reduce registrants'—and hence their clients' and investors'—exposure to cybersecurity incidents, as well as reduce the costs incurred by registrants (and their clients and investors) in dealing with such incidents.

Because unaddressed cybersecurity risks impose externalities on the broader financial system, the proposed risk management rules would also likely reduce systemic risk in the economy.[174] In addition, we expect that by imposing explicit cybersecurity requirements on registrants, the proposed rules would enhance the Commission's ability to oversee and enforce rules designed to protect client and investor information and assets.

Registrants that have already implemented cybersecurity policies and

[167] Throughout the following, we also consider benefits and costs related to potential effects on economic efficiency, competition, and capital formation. We summarize these effects in section III.E.

[168] *See* proposed rules 206(4)–9 and 38a–2; *see also supra* section II.A (discussing proposed risk management rules).

[169] *See supra* section II.A.1 (discussing elements of proposed cybersecurity policies and procedures).

[170] In the case of funds, the initial cybersecurity policies and procedures would need to be approved by the fund's board, including a majority of its independent directors; the board would also be provided annual written reports detailing the findings of the reviews. *See supra* sections II.A.2 and II.A.3 (discussing annual written reports and fund board oversight).

[171] *See supra* section III.C.2 (discussing existing rules).

[172] *See supra* section III.C.1.

[173] *See* IIF/McKinsey Report, *supra* footnote 95.

[174] *See supra* footnote 97 and accompanying text.

procedures that adhere to best practices and are consistent with the proposed rules are not expected to undertake material changes to their existing policies and procedures, in which instance the proposed rules would have limited added benefits. Conversely, registrants who do not currently have cybersecurity policies and procedures or have policies and procedures that lack one or more of the enumerated elements, such as those that are not reasonably designed or not reviewed on an annual basis would need to improve their policies and procedures to comply with the proposed rules with attendant benefits to registrants, investors, the broader financial system, and regulators. As we do not currently have reliable data on the extent to which registrants' existing policies and procedures follow industry best practices, address cybersecurity risks, their ''reasonableness,'' or the frequency at which they are reviewed, it is not possible for us to quantify the scale of the benefits arising from the proposed requirements.[175]

b. Costs

We believe that the costs associated with the proposed amendments related to cybersecurity policies and procedures would primarily result from compliance costs borne by advisers and funds in the adoption and implementation of ''reasonably designed'' cybersecurity policies. In addition to the aforementioned direct compliance costs faced by registrants, the proposed requirements would likely impose indirect costs to service providers catering to advisers and funds. Under the proposal, the cybersecurity practices of these service providers would need to be evaluated by advisers and funds subject to the proposed amendments to help ensure that service providers implement and maintain cybersecurity measures that address the required elements of the policies and procedures provisions of this proposal.[176] Some of the cost of such evaluations, as well as the costs of resulting remedial actions may fall on service providers. Moreover, because the proposal requires registrants to include contractual provisions in its agreements with service providers to guarantee adherence to the required measures, the costs associated with negotiating such contractual provisions may also be partly borne by service providers.[177] Ultimately, all these costs may be passed on—in whole or in part—to clients and investors.

As discussed above, we believe that advisers and funds that currently follow cybersecurity best practices will likely find that their existing policies and procedures are largely consistent with the requirement of this proposal and as such, would not need to be materially altered. Similarly, we believe that advisers of private funds subject to the FTC Safeguards Rule will have already developed policies and procedures consistent with the requirements of the current proposal.[178] Consequently, for such registrants, the compliance costs associated with the proposed policies and procedures requirements would likely be minimal.[179] Conversely, registrants who currently do not have policies and procedures in place meeting the proposed requirement would bear compliance costs related to improving them. In the extreme, we expect that registrants with *no* current cybersecurity policies and procedures would have to bear substantial costs. Typical estimates of cybersecurity spending in the financial industry are on the order of 0.5% of revenue; [180] assuming that levels of spending of this order are required to obtain ''reasonably designed'' policies and procedures, registrants who have no such policies would need to bear costs of that order. Of course, as discussed above, it is unlikely that a fund or adviser operating today completely lacks cybersecurity policies and procedures. Here, the same issues that make quantifying the benefits impracticable also render quantification of compliance costs impracticable.[181] However, as discussed in section III.C.1 we believe that existing adviser and fund rules require certain cybersecurity practices to be substantially in place; consequently, the largest compliance costs resulting from the proposed policies and procedures requirement are likely to be borne by registrants not currently following industry noted best practices.[182] We also anticipate that the bulk of any compliance costs associated with developing and implementing policies and procedures would be incurred at the level of an advisory firm (or parent firm) and fund family, rather than by each adviser and fund individually.[183]

The proposed provisions require registrants to consider the cybersecurity risks resulting from their reliance on third-party service providers that receive, maintain, or process adviser or fund information, or are otherwise permitted to access their information systems and any information residing therein.[184] Thus, the proposed requirements would affect a broad range of service providers: Not only entities such as custodians, brokers, and valuation services, but also email providers, customer relationship management systems, cloud applications, and other technology vendors that meet this criterion. Registrants would be required to document that such service providers implement and maintain appropriate measures to protect information of clients and investors and the systems hosting said information, pursuant to a written contract between the registrant and its service provider.[185] As a result, practically all service providers providing business-critical services would face market pressure to (and thus bear costs related to) document and, in some cases, enhance their cybersecurity practices so as to satisfy affected registrants' requirements.[186] Some funds and advisers may find that one or several of their existing service providers may not be able to—or wish to—support compliance with the proposed rule. Similarly, some funds and advisers may find that one or several of their existing service providers may not be able to—or wish to—enter into suitable written contracts. In these cases, the fund or adviser would need to switch service providers and bear the associated switching costs, while the service providers would suffer loss of their fund and adviser customers.[187] In other cases, a fund or adviser may determine that a service provider can be used subject to renegotiation of service agreements,

[175] Generally, quantification in areas that involve ''reasonableness'' criteria is difficult as establishing reasonableness requires case-by-case consideration.

[176] *See* proposed rules 206(4)–9(a)(3)(ii) and 38a–2(a)(3)(ii).

[177] *Id.*

[178] *See supra* section III.C.2.

[179] We separately consider direct costs associated with information collection burdens within the meaning of the Paperwork Reduction Act in section IV. *See also supra* footnote 86.

[180] *See supra* footnote 107.

[181] As noted earlier, we do not currently have reliable data on the extent to which registrants address cybersecurity risks, their ''reasonableness,'' or the frequency at which they are evaluated.

[182] *See supra* section III.C.2.

[183] *See supra* section III.C.3 (noting that 82% of funds belong to 290 fund families).

[184] *See* proposed rules 206(4)–9 and 38a–2.

[185] *See supra* section II.A.1.c.

[186] We note that a service provider involved in any business-critical function would likely need to receive, maintain, or process either adviser or fund information.

[187] If for example the fund or adviser has insufficient market power to affect changes in the service provider's cybersecurity policies. This is most likely to occur with smaller advisers and funds employing generic service providers who do not specialize in providing services to funds or advisers.

potentially imposing substantial contracting costs on the parties.[188]

We expect that for service providers that offer specialized services to the adviser and fund industry, the proposed rule amendments would impose additional costs related to remediating and/or documenting the provider's cybersecurity practices so as to satisfy advisers and funds subject to the proposed amendments. These costs may be passed on to advisers and funds and ultimately to clients and investors. However, we do not generally expect these costs to be large, as we believe that the nature of service provider business models and resulting economies of scale give service providers motivation for and advantages in the development of robust cybersecurity measures and that such measures would generally address the elements required in this proposal.[189]

Providers of more generic services (*e.g.,* customer relationship management systems, cloud storage, or email systems) may also bear some costs related to satisfying requests from large funds and advisers attempting to assess service providers' cybersecurity risk. For example, such providers may be asked to provide additional documentation of their cybersecurity practices, to offer additional guarantees, or to change some aspect of their practices during contract negotiations. Even if satisfying the intent of these additional customer requirements would not represent a significant expense for service providers, contracting frictions are likely to prevent some service providers from doing so.[190] In such cases, registrants would bear costs related to finding alternative service providers while existing service providers would suffer lost revenue.[191]

The aforementioned costs would be particularly acute for smaller advisers and funds that rely on generic service providers. Smaller registrants may not have sufficient bargaining power with service providers of more generic services to effect meaningful changes in cybersecurity practices or contractual provisions.[192] Thus, to the extent that the existing cybersecurity practices of generic service providers cannot be reconciled with the proposed requirements, some advisers and funds may be forced to switch providers and bear the associated switching costs; at the same time, the former service providers would suffer loss of revenue from these customers.

2. Disclosures of Cybersecurity Risks and Incidents

Proposed amendments to part 2A for Form ADV and proposed amendments to fund registration statements would require a narrative description of the cybersecurity risks advisers' face, how they assess, prioritize, and address cybersecurity risks and any significant adviser or fund cybersecurity incidents that had occurred in the past two years.[193] Under the proposed amendments, significant cybersecurity incidents would need to be disclosed either by filing an amendment to Form ADV promptly (in the case of advisers) or by amending a prospectus by filing a supplement with the Commission (in the case of funds).[194] For fund registration statements, the proposed amendments would require the disclosures to be submitted using the Inline XBRL structured data language.[195]

a. Benefits

As discussed in section III.B there exists an information asymmetry between clients and investors vis-à-vis advisers and funds. This information asymmetry, together with limitations to private contracting,[196] inhibits clients' and investors' ability to screen and discipline advisers and funds based on the effectiveness of their cybersecurity policies. In principle, the proposed disclosure requirements would help alleviate this information asymmetry, and in so doing enable clients and investors to better assess the effectiveness of advisers' and funds' cybersecurity preparations and the cybersecurity risks of different advisers and funds. For example, clients and investors could use the frequency or nature of significant cybersecurity incidents—as disclosed under the proposed amendments—to infer an adviser's or fund's effort toward preventing cyberattacks. Likewise, clients and investors could use the narrative descriptions of cybersecurity incident handling procedures to avoid advisers and funds with less well-developed procedures.

The scale of an information asymmetry mitigation benefit would depend on the degree to which the proposed disclosures reveal information useful to clients and investors about risks and on their ability to use it to infer the level of cybersecurity preparations implemented by advisers and funds. Even when cybersecurity preparations are high, a cybersecurity attack may succeed.[197] If some types of reportable cybersecurity incidents are largely the result of chance while other types are a result of insufficient cybersecurity preparation, the client or investor would need to be able to differentiate between the two types of incidents to extract useful information about a fund's or adviser's level of cybersecurity preparations.[198] Many clients and investors are unlikely to be experts on cybersecurity, and their ability to make these distinctions could be limited.[199]

To the extent such information asymmetry reduction effects result from the proposed cybersecurity incident disclosures in fund registration statements, an Inline XBRL requirement would likely augment those effects by

[188] These costs include the direct costs associated with reviewing and renegotiating existing agreements as well as indirect costs arising from service providers requiring additional compensation for providing the required contractual provisions.

[189] For such service providers, the delivery of services via communication networks is often at the core of the business, practically necessitating reasonably designed cybersecurity policies. Moreover, such service providers generally deliver their products (or some customizations thereof) to multiple customers, resulting in economies of scale in the development of cybersecurity measures.

[190] For example, the costs associated with legal review of alterations to standard contracts may not be worth bearing if affected registrants represent a small segment of the service provider's business.

[191] At the same time, these frictions would benefit service providers that cater to customers in regulated industries.

[192] For example, it is highly unlikely that a small investment adviser would be able to effect any changes in its contracts with providers of generic services such as Amazon or Google.

[193] *See supra* section II.C.

[194] *See* proposed rule 204–3; *see also supra* footnotes 80 and 81 and accompanying text.

[195] *See supra* section II.C.4.

[196] *See* Tirole, *supra* footnote 94.

[197] Although ''adequate'' cybersecurity preparations can be expected to reduce cybersecurity incidents, they are unlikely to eliminate them entirely. For example, a firm may suffer a cybersecurity breach due to an attacker discovering a ''zero-day exploit'' (*i.e.,* an exploit that is not generally known to exist) in some underlying IT system. As a practical matter, even the best preparation (*e.g.,* keeping up to date with vendor patches, quickly addressing vulnerabilities, etc.) may not be effective against such exploits. Similarly, for many firms, it may not be feasible to fix a known vulnerability immediately (*e.g.,* weakness in an encryption algorithm) as the fix may require upgrades to numerous systems. In this case, many firms could be exposed to a vulnerability for some time. Because the time it takes for an attacker to exploit such a vulnerability successfully is likely to involve some element of chance, firms that ultimately suffer an incident resulting from such a vulnerability may simply be ''unlucky.''

[198] For example, incidents resulting from advanced persistent threats may be unavoidable, or avoidable only through very high level of effort. *See supra* footnote 100. On the other hand, incidents arising from brute force password attacks can be avoided with minimal effort. Observers unable to differentiate between these two types of incidents would have difficulty drawing correct inference about the relative effort of different incident reporters.

[199] They may however rely on experts for such assessments.

making the proposed disclosures more easily retrievable and usable for aggregation, comparison, filtering, and other analysis.[200] As a point of comparison, XBRL requirements for public operating company financial statement disclosures have been observed to mitigate information asymmetry by reducing information processing costs, thereby making the disclosures easier to access and analyze.[201] This reduction in information processing cost has been observed to facilitate the monitoring of companies by external parties, and, as a result, to influence companies' behavior, including their disclosure choices.[202]

While these observations are specific to operating company financial statement disclosures, and not to disclosures from funds that are outside the financial statements, such as the proposed cybersecurity incident disclosures, they indicate that the proposed Inline XBRL requirements could directly or indirectly (*i.e.,* through information intermediaries such as financial media, data aggregators, and academic researchers), provide fund investors with increased insight into cybersecurity-related incidents at specific funds and across funds, fund managers, and time periods.[203] Also, in contrast to XBRL financial statements (including footnotes), which consist of tagged quantitative and narrative disclosures, the proposed incident disclosures would consist largely of tagged narrative disclosures.[204] Tagging narrative disclosures can facilitate analytical benefits such as automatic comparison/redlining of these disclosures against prior periods and the performance of targeted artificial intelligence/machine learning assessments (tonality, sentiment, risk words, etc.) of specific cybersecurity disclosures rather than the entire unstructured document.[205]

The markets for advisory services and funds present clients and investors with a complex, multi-dimensional, choice problem. In choosing an adviser or fund, clients and investors may consider investment strategy, ratings or commentaries, return histories, fee structures, risk exposures, reputations, etc. While we are not aware of any studies that examine the role perceptions of cybersecurity play in this choice problem, the extant academic literature suggests that investors focus on salient, attention-grabbing information such as past performance and commissions when making such choices.[206] Moreover, to the extent that cybersecurity disclosures are ''boilerplate'' they may be less informative.[207] Conversely, cybersecurity incidents—especially those that involve loss of customer data or assets—are likely to garner attention. Thus, we expect that the proposed requirement to disclose significant cybersecurity incidents would have more of a direct effect on clients' and investors' choices. In addition, third parties such as rating services, journalists, or ''adviser advisers'' [208]—who may be more capable of extracting useful information out of the proposed disclosures—may incorporate it in assessments ultimately provided to clients and investors. Whether directly or indirectly, registrants with subpar cybersecurity policies and procedures—as revealed by ''excess'' cybersecurity incidents—could face pressure to improve said policies to reduce such excess incidents. Similarly, with respect to the proposed disclosures of cybersecurity incident handling procedures, funds and advisers that disclose having substandard procedures could face market pressure to improve the quality of their cybersecurity incident handling procedures.[209]

The proposed incident disclosure requirement should also benefit the current clients and investors of advisers and funds that experience a cybersecurity incident by providing notice that personal information, assets, or funds may have been compromised. Based on the notice, the clients and investors could take timely remedial actions such as auditing financial statements, blocking accounts that may have been compromised, or monitoring account activity.

b. Costs

Because reasonably designed cybersecurity policies and procedures would—in practice—require the collection of information that make up the proposed disclosures, we do not believe that the disclosure requirement

[200] The proposed Inline XBRL requirement would apply to cybersecurity risks and incidents disclosures in fund registration statements on Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6. *See supra* section II.C.4. Advisers would not be required to tag the proposed Form ADV disclosures in Inline XBRL. *See supra* section II.C.1.

[201] *See., e.g.,* Joung W. Kim, Jee-Hae Lim, and Won Gyun No, The Effect of First Wave Mandatory XBRL Reporting Across the Financial Information Environment, 26.1 *Journal of Information Systems* 127–153 (Spring 2012) (finding evidence that ''mandatory XBRL disclosure decreases information risk and information asymmetry in both general and uncertain information environments''); Yuyun Huang, Jerry T. Parwada, Yuan George Shan, and Joey Wenling Yang, Insider Profitability and Public Information: Evidence From the XBRL Mandate (Working Paper) (Sept. 17, 2019) (finding that XBRL levels the playing field between insiders and non-insiders, in line with the hypothesis that ''the adoption of XBRL enhances the processing of financial information by investors and hence reduces information asymmetry'').

[202] *See, e.g.,* Jeff Zeyun Chen, Hyun A. Hong, Jeong-Bon Kim, and Ji Woo Ryou, Information Processing Costs and Corporate Tax Avoidance: Evidence from the SEC's XBRL Mandate, 40 *Journal of Accounting and Public Policy* 2 (Mar.–Apr. 2021) (finding XBRL reporting decreases likelihood of firm tax avoidance because ''XBRL reporting reduces the cost of IRS monitoring in terms of information processing, which dampens managerial incentives to engage in tax avoidance behavior''); Paul A. Griffin, Hyun A. Hong, Jeong-Bon Kim, and Jee-Hae Lim, The SEC's XBRL Mandate and Credit Risk: Evidence on a Link between Credit Default Swap Pricing and XBRL Disclosure (finding XBRL reporting enables better outside monitoring of firms by creditors, leading to a reduction in firm default risk), 2014 American Accounting Association Annual Meeting (2014); Elizabeth Blankespoor, The Impact of Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate, 57 *Journal of Accounting Research* 4 (Sept. 2019) (finding ''firms increase their quantitative footnote disclosures upon implementation of XBRL detailed tagging requirements designed to reduce information users' processing costs,'' and ''both regulatory and non-regulatory market participants play a role in monitoring firm disclosures,'' suggesting that the ''processing costs of market participants can be significant enough to impact firms' disclosure decisions'').

[203] *See, e.g.,* Nina Trentmann, Companies Adjust Earnings for Covid–19 Costs, but Are They Still a One-Time Expense? The Wall Street Journal (Sept. 4, 2020) (citing an XBRL research software provider as a source for the analysis described in the article); *Bloomberg Lists BSE XBRL Data, XBRL.org* (Mar. 17, 2019); Rani Hoitash, and Udi Hoitash, Measuring Accounting Reporting Complexity with XBRL, 93 *The Accounting Review* 259–287 (2018).

[204] The proposed fund disclosure requirements do not expressly require the disclosure of any quantitative values in the discussion of cybersecurity incidents; if a fund includes any quantitative values as nested within the required discussion (*e.g.,* disclosing the number of days until containment), those values would be individually detail tagged, in addition to the block text tagging of the narrative disclosures.

[205] To illustrate, using the search term ''remediation'' to search through the text of all fund registration statements over a certain period of time, so as to analyze the trends in funds' disclosures related to cybersecurity incident remediation efforts during that period, could return many narrative disclosures outside of the cybersecurity incident discussion (*e.g.,* disclosures related to potential environmental liabilities in the risk factors section).

[206] *See, e.g.,* Brad M. Barber, Terrance Odean, and Lu Zheng, Out of Sight, Out of Mind: The Effects of Expenses on Mutual Fund Flows, 78 (6) *The Journal of Business* 2095–2120 (2005).

[207] However, the process of adopting ''boilerplate'' language by advisers and funds may itself affect improvements in policies and procedures.

[208] ''Adviser advisers'' are advisers who assist clients in selecting other advisers to manage some subset of the client's portfolio.

[209] Here we are assuming that clients, investors, or third parties evaluating advisers and funds would favor advisers and funds that include standard language relating to cybersecurity procedures in their disclosures. Further, we assume that registrants with ''superior'' procedures could adopt standard disclosures with no cost; conversely registrants with ''substandard'' procedures would need to affect improvements in their procedures to be able to furnish the standard disclosure.

itself would impose significant compliance costs beyond those already discussed.[210] However, these disclosures may impose costs due to market reactions, and due to the information they reveal to cybercriminals.

Funds and advisers that report many cybersecurity incidents and—to a lesser extent—those who report less well-developed cybersecurity incident handling procedures may bear costs arising from reactions in the marketplace: They may lose business or suffer harm to their reputations and brand values.[211] These costs would likely be borne not only by advisers and funds with inadequate cybersecurity policies, but also those who experience cybersecurity incidents despite having made reasonable efforts to prevent them. In addition, to the extent that clients and investors ''overreact'' [212] to disclosures of cybersecurity breaches, advisers and funds may pursue a strategy of ''overinvestment'' in cybersecurity precautions (to avoid such overreactions) resulting in reduced efficiency.

Mandating disclosure about cybersecurity incidents entails a tradeoff. While disclosure can inform clients and investors, disclosure can also inform cyber attackers that they have been detected. Also, disclosing too much (*e.g.,* the types of systems that were affected, how they were compromised) could be used by cybercriminals to better target their attacks, imposing costs on registrants. For example, announcing a cybersecurity incident naming a specific piece of malware and the degree of compromise can imply a trove of details about the structure of the victim's computer systems, the security measures employed (or not employed), and potentially suggest promising attack vectors for future attacks by other would-be attackers. Under the proposed amendments, registrants would be required to disclose cybersecurity incidents through filing of amendments to From ADV or registration statements in a timely manner.[213] In so doing, the registrants would need to identify the entity or entities affected, when the incidents were discovered and whether they are ongoing, whether any data was stolen, altered, or accessed or used for any other unauthorized purpose, the effect of the incident on the adviser's operations, and whether the adviser or service provider has remediated or is currently remediating the incident.[214] Thus, registrants would generally not be required to disclose technical details about incidents that could compromise their cybersecurity going forward. As before, the costs associated with conveying this information to attackers is impracticable to estimate.[215]

In addition, for one type of registrant—unit investment trusts—the requirement to tag the cybersecurity incident disclosures in Inline XBRL would create additional compliance costs. Unlike the other funds subject to the proposed cybersecurity incident disclosure requirements, unit investment trusts that register on Form N–8B–2 and file post-effective amendments on Form S–6 are not currently subject to Inline XBRL requirements.[216] As such, for these unit investment trusts, the proposed Inline XBRL requirement would entail compliance costs beyond the marginal administrative costs associated with tagging an additional section of a filing that is already partially tagged.[217] For example, these unit investment trusts could incur implementation costs associated with licensing Inline XBRL compliance software and training staff to use the software to tag the cybersecurity incident disclosures. To the extent a unit investment trust outsources its tagging to a third-party service provider, any costs that such a service provider would incur in developing the capability to tag unit investment trust filings could be passed on to the unit investment trust. Given the improvements in technology and the increased familiarity with XBRL tagging at advisers and service providers since fund XBRL requirements were first adopted in 2009, we expect these costs would be diminished relative to the compliance costs that funds incurred at the time of initial XBRL adoption.[218]

3. Regulatory Reporting of Cybersecurity Incidents

Under the proposed rules, advisers would be required to report significant cybersecurity incidents to the Commission within 48 hours.[219] The reporting requirement would extend to significant cybersecurity incidents at an adviser's ''covered client''—a client that is a registered investment company or business development company, or a private fund.[220] Cybersecurity incident reports would be submitted on proposed new Form ADV–C, and amended when information reported previously becomes materially inaccurate or if new material information is discovered.[221] Under the proposed rules, significant cybersecurity incidents are those that significantly affect the critical operations of an adviser or fund or lead to unauthorized access or use of information that results in substantial harm to the adviser or its clients or a fund or its investors.[222] Form ADV–C reports would be treated as confidential by the Commission.[223]

a. Benefits

Confidential, regulatory reporting of significant cybersecurity incidents would allow the Commission staff to assess trends, identify emerging risks in cybersecurity, and facilitate information sharing among advisers and funds. It would also allow the Commission to better coordinate a response to cybersecurity incidents which have the potential to cause broader disruptions to the financial markets, undermine financial stability, and contribute to systemic risk.

As discussed in section III.B, advisers and funds have incentives to not disclose information about cybersecurity incidents. Such incentives reduce the information available about cybersecurity threats and thereby inhibit the efficacy of collective (*i.e.,* an

[210] *See supra* section III.D.1. Administrative costs related to disclosure, including costs associated with legal reviews of such disclosures and costs attendant to tagging an additional section of a fund registration statement that is already subject to Inline XBRL requirements, are covered in the Paperwork Reduction Act analysis in section IV. *See also supra* footnote 86.

[211] We expect that clients and investors will be more likely to act in response to realized cybersecurity incidents than in response to advisers and funds descriptions of their policies and procedures.

[212] Such overreactions can be the result of overconfidence about the precision of the signal. *See, e.g.,* Kent Daniel, David Hirshleifer, and Avanidhar Subrahmanyam, Investor Psychology and Security Market Under- and Overreactions, 53 (6) *The Journal of Finance* 1839–85 (Dec. 1998).

[213] *See supra* section II.C.

[214] *Id.*

[215] As noted in the Broad Economic Considerations section (*supra* section III.B), firms are generally hesitant to provide information about cyberattacks. Similarly, cybercriminals are not generally forthcoming with data on attacks, their success, or factors that made the attacks possible. Consequently, data from which plausible estimates could be made is not available.

[216] *See supra* footnote 83.

[217] Such administrative costs are covered in the Paperwork Reduction Act analysis in section IV.

[218] As a point of comparison, an AICPA survey of small reporting companies found a 45% decline in the average annual cost and a 69% decline in the median annual cost of fully outsourced XBRL tagging services from 2014 to 2017. *See* Michael Cohn, AICPA Sees 45% Drop in XBRL Costs for Small Companies, *Acct. Today,* (Aug. 15, 2018), *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies.*

[219] *See* proposed rule 204–6; *see also supra* section II.B.

[220] *Id.; see also* proposed rule 38a–2.

[221] *See* proposed rule 204–6; *see also supra* section II.B.

[222] *See* proposed rule 204–6(b); *see also* proposed rule 206(4)–9.

[223] *See supra* section II.B.

industry's or a society's) cybersecurity measures.[224] At the same time, complete transparency in this area likely runs the risk of facilitating future attacks.[225] As discussed in section III.C.1, the challenge of effective information sharing has long been recognized, and government efforts at encouraging such sharing on a voluntary basis have had only limited success.[226] The proposed reporting requirement, by channeling incident reports through the Commission, would create the opportunity for sharing of information valuable in preventing future cyberattacks, while preserving confidentiality and limiting the cybersecurity risks of public disclosure. For example, a series of reports detailing the compromise of a system commonly employed by small advisers could result in the Commission issuing a notice to similar advisers of the risks of the particular system. On the other hand, a general uptick in ''phishing'' style attacks using particular language and originating from similar addresses could lead the Commission to issue a risk alert to all registrants. Of course, in some cases, it may not be possible for the Commission to disclose any information discovered from a report without violating the confidentiality of the reporting entity or without exacerbating cybersecurity risks for some entities.[227] In such cases, the Commission may still be able to share information with relevant law enforcement or national security agencies.

In addition to facilitating information sharing, the proposed reporting requirements could also allow the Commission to coordinate market-wide responses to cybersecurity incidents. For example, an incident that affects the ability of an important money market fund could be used by the Commission to initiate an inter-agency response aimed at ensuring stability in the money markets.[228] Alternatively, patterns discovered through the reports may trigger referral to national security agencies for further investigation.

The aforementioned benefits arising from improved information sharing and response coordination are contingent on the Commission creating effective schemes to do so as well as the utility of the required reports in mounting effective regulatory responses. In particular, delays in registrants' discovery of cybersecurity incidents may hinder the utility of such reports in triggering a ''real-time'' regulatory response.[229] Thus the utility of such reports may be confined to information sharing and referrals to law enforcement and national security agencies.

b. Costs

The proposed requirements for advisers and funds to adopt and implement reasonably designed cybersecurity policies and procedures include provisions related to ongoing monitoring of threats and vulnerabilities[230] as well as provisions related to cybersecurity incident response and recovery.[231] Compliance with the aforementioned provisions effectively requires the collection of information that is solicited on proposed Form ADV–C.[232] Thus, we do not believe that the proposed reporting requirement would impose compliance costs beyond those related to developing and implementing reasonably designed policies and procedures discussed in section III.D.1. The proposed filing requirements would entail certain administrative costs, and these are discussed in the Paperwork Reduction Act analysis in section IV. Other costs that could arise from the reporting provisions would be the potential for the unintended release of information disclosed on Form ADV–C through the Commission's response to such disclosures. Unintended release of such details could facilitate future cyberattacks against funds and advisers as well as against advisers and fund with similar vulnerabilities.

4. Recordkeeping

Under the new recordkeeping requirements advisers and funds would be required to maintain, for five years records of: (1) Cybersecurity policies and procedures;[233] (2) annual reviews thereof; (3) documents related to the annual reviews; (4) regulatory filings[234] related to cybersecurity incidents required under the proposed amendments;[235] (5) any cybersecurity incident; and (6) cybersecurity risk assessments.

a. Benefits

These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities. As a result, the Commission would be better able to detect deficiencies in the advisers' and funds' cybersecurity hygiene so that such deficiencies could be remedied. Insofar as correcting deficiencies results in material improvement in the cybersecurity practices of individual advisers and funds that would reduce the risk and/or magnitude of future cybersecurity incidents, the proposed amendments would benefit clients and investors.

b. Costs

We do not expect the proposed recordkeeping requirements to impose additional compliance costs not covered elsewhere in this analysis. The compliance costs related to the creation of records subject to the recordkeeping provisions are covered in section III.D.1. As advisers and funds are currently subject to substantially similar recordkeeping requirements applicable to other required policies and procedures, we do not expect registrants will need to invest in new recordkeeping staff, systems, or procedures to satisfy the new recordkeeping requirements.[236] The marginal administrative costs arising from maintaining additional records related to these provisions using existing systems are covered in the Paperwork Reduction Act analysis in section IV.

E. Effects on Efficiency, Competition, and Capital Formation

As discussed in the foregoing sections, market imperfections could lead to underinvestment in cybersecurity by advisers and funds, and information asymmetry could

[224] *See, e.g.,* Denise E. Zheng and James A. Lewis, Cyber Threat Information Sharing, Center for Strategic and International Studies (Mar. 2015), *available at https://www.csis.org/analysis/cyber-threat-information-sharing* (recommending that regulators encourage information sharing).

[225] Although ''security through obscurity'' as a cybersecurity philosophy has long been derided, ''obscurity,'' or more generally ''deception,'' has been recognized as an important cyber resilience technique. *See* Ross, Ron, Victoria Pillitteri, Richard Graubart, Deborah Bodeau, and Rosalie McQuaid, Developing Cyber Resilient Systems: A Systems Security Engineering Approach, *National Institute of Standards and Technology* (Dec. 2021), *available at https://doi.org/10.6028/NIST.SP.800-160v2r1.* See also *supra* section III.D.2 (discussion of costs associated with disclosure).

[226] *See supra* section III.C.1 (discussion of information sharing).

[227] For example, sharing information about the type of attack can be used to draw inferences about the type of system that was targeted, which may imply a particular target entity (*i.e.,* the entity known to use that system).

[228] Depending on the circumstances, such responses could be coordinated through FSOC or through bilateral contacts with other regulators.

[229] Under the proposed rules registrants would have to report incidents within 48 hours. *See* proposed rule 204–6(a).

[230] *See supra* section II.A.1.d.

[231] *See supra* section II.A.1.e.

[232] *See* proposed rules 206(4)–9(a)(5) and 38a–2(a)(5).

[233] *See* proposed rules 204–2 and 38a–2(e).

[234] For advisers, copies of any Form ADV–C filed. For funds, reports provided to the Commission pursuant to proposed rule 38a–2(a)(5).

[235] *See* proposed rules 204–2 and 38a–2(e).

[236] *See* proposed rules 204–2(a)(17) and 38–2(e).

contribute to inefficient production of cybersecurity defenses. The proposed rules and amendments aim to mitigate the inefficiencies resulting from these imperfections by: (1) Imposing mandates on cybersecurity policies and procedures that could reduce cybersecurity underinvestment; [237] (2) providing additional disclosure to inform clients and investors about advisers' and funds' cybersecurity efforts, reducing information asymmetry; [238] and (3) creating a reporting framework that could improve information sharing and improved cybersecurity defense production.[239] While the proposed rules and amendments have the potential to mitigate inefficiencies resulting from market imperfections, the scale of the overall effect will depend on numerous factors, including: The state of existing of cybersecurity preparations,[240] the degree to which the proposed provisions induce increases to these preparations,[241] the effectiveness of additional preparations at reducing cybersecurity risks,[242] the degree to which clients and investors value additional cybersecurity preparations,[243] the degree of information asymmetry and bargaining power between clients and investors vis-à-vis advisers and funds,[244] the bargaining power of registrants vis-à-vis service providers,[245] service providers' willingness to provide bespoke contractual provisions to registrants,[246] the informativeness of the proposed disclosures, the scale of the negative externalities on the broader financial system,[247] the effectiveness of existing information sharing arrangements, and the informativeness of the required regulatory reports (as well as the Commission's ability to make use of them).[248] As discussed earlier in this section, it is not practicable to measure most of these factors. As such, it is also not practicable to quantify the overall effect of the proposed provisions on economic efficiency. Although any increased efficiency resulting from the proposed provisions can generally be expected to lead to improved capital formation,[249] quantifying such effects is similarly impracticable.[250]

Because the proposed rules and amendments are likely to have differential effects on registrants along a number of dimensions, their overall effect on competition among registrants is difficult to predict. For example, smaller registrants—who we believe are less likely to have extensive cybersecurity measures already in place—are likely to face disproportionately higher costs resulting from the proposed rules and amendments.[251] Thus, the proposed rules and amendments could tilt the competitive playing field in favor of larger registrants. On the other hand, if clients and investors believe that the proposed rules and amendments effectively induce the appropriate level of cybersecurity effort among registrants, smaller registrants would likely benefit most from these improved perceptions. Similar differential effects could apply to registrants and service providers that are more (or less) focused on their digital business.

With respect to competition among registrants' service providers, the overall effect of the proposed rules and amendments is similarly ambiguous. It is likely that requiring affected registrants to provide oversight of service providers' cybersecurity practices pursuant to a written contract would lead some service providers to cease offering services to affected registrants.[252] This would almost certainly ''reduce'' competition in a crude sense: The number of potential service providers available to registrants would likely be diminished. However, this may ''improve'' competition in another sense: Service providers with ''inadequate'' cybersecurity practices (*i.e.,* those unwilling to commit contractually to implementing cybersecurity practices deemed ''reasonably designed'' by the registrant) would be unable to undercut service providers with ''adequate'' cybersecurity practices.

F. Alternatives Considered

In formulating our proposal, we have considered various alternatives. Those alternatives are discussed below and we have also requested comments on certain of these alternatives.

1. Alternatives to the Proposed Policies and Procedures Requirement

a. Require Only Disclosure of Cybersecurity Policies and Procedures Without Prescribing Elements

Rather than requiring registrants to adopt cybersecurity policies and procedures with specific enumerated elements, the Commission considered requiring advisers and funds to only provide explanations or summaries of their cybersecurity practices to their clients or investors.

We believe that such an approach would create weaker incentives to address potential underspending in cybersecurity measures as it would rely entirely on clients' and investors' (or third parties' providing analysis to clients and investors) [253] ability to assess the effectiveness of registrants' cybersecurity practices from registrants' explanations. Given the cybersecurity risks of disclosing detailed explanations of cybersecurity practices,[254] it is likely that such explanations would include only vague boilerplate language and provide little information that could be used by observers to infer the degree of cybersecurity preparedness. Such a ''disclosure-only'' regime is unlikely to be effective at resolving the underlying information asymmetry and would therefore be unlikely to affect meaningful change in registrants' cybersecurity practices.[255] Moreover, not requiring specific enumerated elements in cybersecurity policies and procedures would likely result in less uniform cybersecurity preparedness across registrants, undermining clients'

[237] *See supra* footnotes 92–96 and accompanying text; section III.D.1.

[238] *See supra* footnotes 92–96 and accompanying text; section III.D.2.

[239] *See supra* footnotes 118–123 and accompanying text; section III.D.3.

[240] *See supra* section III.C.1. Here, we are concerned about the degree to which registrants' state of cybersecurity preparations diverge from socially optimal levels.

[241] *See supra* footnote 175 and accompanying text.

[242] Formally, the marginal product of the proposed policies and procedures in the production of cybersecurity defenses.

[243] Formally, clients' and investors' utility functions—specifically the marginal utilities of advisers' and funds' cybersecurity hygiene.

[244] In other words, the degree to which clients and investors can affect the policies of advisers and funds. Generally, we expect that fund investors will typically be small and dispersed and thus be subject to large information asymmetry and have limited ability to affect the policies of funds. For clients of advisers the situation is likely to involve more heterogeneity, with some clients wielding very little power over adviser policies (*e.g.,* small retail clients) while others wield considerable power (*e.g.,* large pension funds).

[245] *See supra* footnotes 184–192 and accompanying text.

[246] *Id.*

[247] *See supra* section III.B.

[248] *See supra* section III.D.3.a.

[249] The proposed provisions do not implicate channels typically associated with capital formation (*e.g.,* taxation policy, financial innovation, capital controls, investor disclosure, intellectual property, rule-of-law, and diversification). Thus, the proposed rule amendments are likely to have only indirect, second order effects on capital formation arising from any improvements to economic efficiency.

[250] *Id.* Qualitatively, these effects are expected to be small.

[251] *See supra* footnote 97 and accompanying text.

[252] *See supra* footnotes 184–192 and accompanying text.

[253] *See supra* footnote 208 and accompanying text.

[254] *See supra* section III.D.2.B (discussing tradeoffs of cybersecurity disclosure).

[255] Here changes in cybersecurity practices would depend entirely on market discipline exerted by relatively uninformed market participants.

and investors' broader confidence in the fund and adviser industries. At the same time, the costs associated with this alternative would likely be minimal, as registrants would be unlikely to face pressure to adjust practices as a result of such disclosures.

b. Require Cybersecurity Policies and Procedures With More Limited Prescribed Elements

We also considered paring down some enumerated elements from the proposed cybersecurity policies and procedures requirement, more specifically the oversight of service providers component of the information protection element. In this regard, we considered narrowing the scope of the types of service providers to named service providers discussed further above and requiring a periodic review and assessment of a named service provider's cybersecurity policies and procedures in lieu of a written contract. We further considered requiring service providers that receive, maintain, or process adviser or fund information to provide security certifications in lieu of the written contract requirement.

Narrowing the scope of the types of service providers affected by the proposal could lower costs for registrants, especially smaller registrants who rely on generic service providers and would have difficulty effecting changes in contractual terms with such service providers.[256] However, given that in the current technological context [257] cybersecurity risk exposure of registrants is unlikely to be limited to (or even concentrated in) certain named service providers, narrowing the scope of service providers would likely lead to lower costs only insofar as it reduces effectiveness of the regulation. In other words, absent a written contractual arrangement with a service provider relating to the provider's cybersecurity practices, it is unlikely that registrants could satisfy their overarching obligations under the proposed rules.

Alternatively, maintaining the proposed scope but only requiring a standard, recognized, certification in lieu of a written contract could also lead to cost savings for registrants.[258] However, we preliminarily believe that it would be difficult to prescribe a set of characteristics for such a ''standard'' certification that would sufficiently address the varied types of advisers and funds and their respective service providers.[259]

c. Require Specific Prescriptive Requirements for Addressing Cybersecurity Risks

The Commission considered including more prescriptive elements in the cybersecurity policies and procedures requirement of the current proposal. For example, advisers and funds could have been required to implement particular controls (*e.g.,* specific encryption protocols, network architecture, or authentication procedures) designed to address each general element of the required cybersecurity policies and procedures. Given the considerable diversity in the size, focus, and technical sophistication of affected registrants,[260] any specific requirements would result in some registrants needing to substantially alter their cybersecurity policies and procedures.

The potential benefit of such an approach would be to provide assurance that advisers and funds have implemented certain specific cybersecurity hygiene practices. But this approach would also entail considerably higher costs as many registrants would need to adjust their existing practices. Considering the variety of advisers and funds registered with the Commission, it would be exceedingly difficult for the Commission to devise specific requirements that are appropriately suited for all registrants: A uniform set of requirements would certainly be both over- and under-inclusive, while providing varied requirements based on the circumstances of the registrant would be complex and impractical. For example, uniform prescriptive requirements that ensure reasonably designed cybersecurity policies and procedures for the largest, most sophisticated advisers and funds would likely be overly burdensome for smaller, less sophisticated advisers with more limited cybersecurity exposures. Conversely, if these uniform prescriptive requirements were tailored to advisers and funds with more limited operations or cybersecurity risk, such requirements likely would be inadequate to address larger registrants' cybersecurity risks appropriately. Alternatively, providing different requirements for different categories of registrants would involve considerable regulatory complexity in delineating the classes of advisers and defining the appropriate requirements for each class. More broadly, imposing detailed prescriptive requirements would effectively place the Commission in the role of dictating details of the IT practices of registrants without the benefit of the registrants' knowledge of their own particular circumstances. Moreover, given the complex and constantly evolving cybersecurity landscape, detailed regulatory requirements for cybersecurity practices would likely limit registrants' ability to adapt quickly to changes in the cybersecurity landscape.[261]

d. Require Audits of Internal Controls Regarding Cybersecurity

Instead of requiring advisers and funds to adopt and implement cybersecurity policies and procedures, the Commission considered requiring advisers and funds to obtain audits of the effectiveness of their existing cybersecurity controls—for example, by obtaining service organization control audits with respect to their cybersecurity practices. This approach would not have required advisers and funds to adopt and implement cybersecurity policies and procedures as proposed, but instead would have required advisers and funds to engage an independent qualified third party to assess their cybersecurity controls and prepare a report describing its assessment and any potential deficiencies.

Under this alternative, an independent third party (*e.g.,* an auditing firm) would certify to the effectiveness of the adviser's or fund's cybersecurity practices. If the firms providing such certifications have sufficient reputational motives to issue credible assessment,[262] and if the scope of such certifications is not overly circumscribed,[263] it is likely that registrants' cybersecurity practices

[256] *See supra* section III.D.1.b (discussing service providers).

[257] Specifically, a context where businesses increasingly rely on third-party ''cloud services'' that effectively place business data out of the business' immediate control.

[258] Service providers may currently be providing certifications as part of an adviser's or fund's policies and procedures.

[259] *See supra* section III.C.3 (discussing the variety of affected registrants); *see also infra* section III.F.1.c (discussing limitation of uniform prescriptive requirements).

[260] *See supra* section III.C.3.

[261] If as in the previous example, the Commission were to require registrants to adopt a specific encryption algorithm, future discovery of vulnerabilities in that algorithm would prevent registrants from fully mitigating the vulnerability (*i.e.,* switching to improved algorithms) in the absence of Commission action.

[262] This would be the case if there was sufficient market pressure or regulatory requirements to obtain certification from ''reputable'' third-parties with business models premised on operating as a going-concern and maintaining a reputation for honesty.

[263] We are assuming that in this alternative, certification would not be limited to only evaluating whether a registrant's stated policies and procedures are reasonably designed, but rather also would include an assessment of whether the policies and procedures are actually implemented in an effective manner.

would end up being more robust under this alternative than under the current proposal. By providing certification of a registrant's cybersecurity practices, a firm would—in effect—be ''lending'' its reputation to the registrant. Because ''lenders'' are naturally most sensitive to down-side risks (here, loss of reputation, lawsuits, damages, regulatory enforcement actions), one would expect them to avoid ''lending'' to registrants with cybersecurity practices whose effectiveness is questionable.[264]

While certification by credible third parties could lead to more robust cybersecurity practices, the costs of such an approach would likely be considerably higher. Because of the aforementioned sensitivity to down-side risk, firms would likely be hesitant to provide cybersecurity certifications without a thorough understanding of a registrant's systems and practices; in many cases, developing such an understanding would involve considerable effort.[265] In addition, it is possible that the inherent ambiguity of what represents ''effective'' practices in an evolving context like cybersecurity would lead to a reluctance among third parties to provide the necessary certification services.[266]

e. Vary Requirements of the Proposed Rules on Cybersecurity and Procedures for Different Subsets of Advisers and Funds

The Commission considered requiring different elements in an adviser's or fund's cybersecurity policies and procedures based on characteristics of the adviser or fund. For example, advisers or funds with assets under management below a certain threshold or with only a limited number of clients or investors could have been required to implement more limited cybersecurity policies and procedures.

This approach could have scaled based on adviser or fund size, business or other criteria, with larger firms, for example, being required to address more elements in their cybersecurity policies and procedures or being required to implement more prescriptive cybersecurity measures. However, as discussed above, cybersecurity risks and vulnerabilities are likely to be unique to each adviser and fund depending on its particular operations, which could make it difficult to use any specific characteristics such as firm size, for example, as an effective proxy to determine the scope of their cybersecurity policies and procedures.

f. Administration and Oversight of Cybersecurity Policies and Procedures

The Commission considered various alternative requirements with respect to administration and oversight of an adviser's or fund's cybersecurity policies and procedures such as requiring advisers and funds to designate a CISO or requiring funds' boards to oversee directly a fund's cybersecurity policies and procedures. There is a broad spectrum of potential approaches to this alternative, ranging from the largely nominal (*e.g.,* requiring registrants to designate someone to be a CISO) to the stringent (*e.g.,* requiring a highly qualified CISO to attest to the effectiveness of the registrant's policies).

While employee designations and similar nominal requirements may improve accountability and enhance compliance in certain contexts, they are unlikely to lead to material improvements in highly technical aspects of business operations. Given the technical complexity of cybersecurity issues, imposing such nominal requirements is unlikely to do much to further the policy objectives or provide substantial economic benefit. At the same time, while such an approach would increase regulatory complexity, it would likely entail minimal costs for registrants.

On the other hand, stringent requirements such as requiring an attestation from a highly qualified CISO as to the effectiveness of a registrant's cybersecurity practices in specific enumerated areas could be quite effective. Expert practitioners in cybersecurity are in high demand and command high salaries.[267] Thus, such an approach would impose substantial ongoing costs on registrants who do not already have appropriately qualified individuals on staff. This burden would be disproportionately borne by smaller registrants, for whom keeping a dedicated CISO on staff would be cost prohibitive. Allowing registrants to employ part-time CISOs would mitigate this cost burden, but such requirements would likely create a *de facto* ''audit'' regime. Such an audit regime would certainly be more effective if explicitly designed to function as such.[268]

2. Modify Requirements for Structuring Disclosure of Cybersecurity Risks and Incidents

The Commission considered changing the scope of the tagging requirements for the proposed fund cybersecurity incident disclosures, such as by removing the requirements for all or a subset of funds. For example, the tagging requirements could have excluded unit investment trusts, which are not currently required to tag any filings in Inline XBRL.[269] Under such an alternative, unit investment trusts would submit their cybersecurity disclosures in unstructured HTML or ASCII, and forego the initial Inline XBRL implementation costs (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors) and ongoing Inline XBRL compliance burdens that would result from the proposed tagging requirement.[270] However, narrowing the scope of tagging requirements, whether based on fund structure, fund size, or other criteria, would diminish the

[264] Under the proposal it is the registrant itself that effectively ''certifies'' its own cybersecurity policies and procedures. Like the third-party auditor, the registrant faces down-side risks from ''certifying'' inadequate cybersecurity practices (*i.e.,* Commission enforcement actions). However, unlike the auditor, the registrant also realizes the potential up-side: Cost savings through reduced cybersecurity expenditures.

[265] It would be difficult for an auditor to provide a credible assessment of the effectiveness of the registrant's cybersecurity practices without first understanding the myriad of systems involved and how those practices are implemented. Presumably, a registrant would not bear these costs as it is likely to possess such an understanding.

[266] What constitutes ''effective'' practices with respect to cybersecurity is likely not as universally accepted as what constitutes ''adequate'' internal controls with respect to accounting or financial disclosure. Thus certifying a firm's cybersecurity practices would likely involve more litigation risk and uncertainty than traditional financial auditing.

[267] A recent survey reports CISO median total compensation of $668,903 for CISOs at companies with revenues of $5 billion or less. *See* Matt Aiello and Scott Thompson, 2020 North American Chief Information Security Officer (CISO) Compensation Survey, *Heidrick & Struggles* (2020), *available at https://www.heidrick.com/-/media/heidrickcom/publications-and-reports/2020-north-american-chief-information-security-officer-ciso-compensation-survey.pdf.*

[268] In designing an effective audit regime, aligning incentives of auditors to provide credible assessments is a central concern. In the context of audit regimes, barriers to entry and the reputation motives of auditing *firms* helps align incentives. It would be considerably more difficult to obtain similar incentive alignment with itinerant part-time CISOs. *See supra* section III.F.1.d (describing the audit regime alternative).

[269] By contrast, funds that file Forms N–1A, N–2, N–3, N–4, and N–6 are currently subject to Inline XBRL tagging requirements for portions of those filings. *See supra* footnote 85.

[270] *See infra* section III.D.3.b. Funds file registration statements and amendments using the Commission's EDGAR electronic filing system, which generally requires filers to use ASCII or HTML for their document submissions, subject to certain exceptions. *See* Regulation S–T, 17 CFR 232.101(a)(1)(iv); 17 CFR 232.301; EDGAR Filer Manual (Volume II) version 60 (Dec. 2021), at 5–1. To the extent unit investment trusts are part of the same fund family as other types of funds that are subject to Inline XBRL requirements, they may be able to leverage those other funds' existing Inline XBRL tagging experience and software, which would mitigate the initial Inline XBRL implementation costs that unit investment trusts would incur under the proposal.

extent of any informational benefits that would accrue as a result of the proposed disclosure requirements by making the excluded funds' cybersecurity incident disclosures comparatively costlier to process and analyze.

The scope of structuring requirements for the proposed disclosures could also have been expanded to cover advisers in addition to funds. Under the proposal, advisers would provide the required cybersecurity disclosures as part of their narrative brochures, which advisers must file electronically with the Commission as a text-searchable PDF file using the FINRA-administered IARD system.[271] Alternatively, the Commission could require advisers to structure the cybersecurity disclosures in IARD-specific XML. Such a requirement would not impose additional incremental compliance costs on advisers, who would use an online form provided by the IARD system to submit their disclosures and would not be required to develop technical expertise to comply with the structuring requirement.[272] However, such an alternative would result in investors receiving most of the narrative brochure disclosures in PDF format and the remaining cybersecurity disclosures—outside the PDF brochure—in IARD-specific XML, which could lead to investor confusion about the location of the disclosures.

3. Public Disclosure of Form ADV–C

The Commission considered requiring the public disclosure of Form ADV–C in the proposal. Assuming that the information submitted by registrants through Form ADV–C filings does not change, making Form ADV–C filings public would increase clients' and investors' information about cybersecurity incidents and thus improve their ability to draw inferences about an adviser's or fund's level of cybersecurity preparations. At the same time, doing so would also assist would-be attackers, who would gain additional insight into the vulnerabilities of a victim's systems. As discussed in section III.D.2.b, release of too much detail about a cybersecurity incident could further compromise cybersecurity of the victim, especially in the short term. Given these risks, requiring public disclosure of Form ADV–C filings would likely have the effect of significantly reducing the detail provided by registrants in these filings. As a result, the information set of clients, investors, and would-be attackers would remain largely unchanged (vis-à-vis the proposal), while the ability of the Commission to facilitate information sharing and to coordinate responses aimed at reducing systemic risks to the financial system would be diminished.

IV. Paperwork Reduction Act Analysis

A. Introduction

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[273] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[274] The proposed rules 206(4)–9, 38a–2, 204–6, and proposed new Form ADV–C would include new information collection burdens, and the proposed amendments would have an effect on the current collection of information burdens of rule 204–2 and rule 204–3 under the Investment Advisers Act and Form ADV, as well as Form N–1A and other registration forms with respect to the Investment Company Act.

Certain funds have current requirements to submit to the Commission information included in their registration statements, or information included in or amended by any post-effective amendments to such registration statements, in response to certain form items in structured data language (''Investment Company Interactive Data'').[275] This also includes the requirement for funds to submit interactive data to the Commission for any form of prospectus filed pursuant to 17 CFR 230.497(c) or 17 CFR 230.497(e) under the Securities Act that includes information in response to certain form items. The proposed amendments to fund registration forms include new structured data requirements to tag information about significant fund cybersecurity incidents using Inline XBRL. Although the interactive data filing requirements are included in the instructions to each form, we are separately reflecting the hour and cost burdens for these requirements in the burden estimate for Investment Company Interactive Data and not in the estimate for each registration statement form.

The titles of new collections of information we are proposing are ''Rule 206(4)–9 under the Investment Advisers Act,'' ''Rule 38a–2 under the Investment Company Act,'' ''Rule 204–6 under the Investment Advisers Act,'' and ''Form ADV–C.'' OMB has not yet assigned control numbers for these titles. The titles for the existing collections of information are: (1) ''Rule 204–2 under the Investment Advisers Act of 1940'' (OMB control number 3235–0278); (2) Rule 204–3 under the Investment Advisers Act of 1940'' (OMB control number 3235–0047); (3) ''Form ADV'' (OMB control number 3235–0049); (4) ''Form N–1A, Registration Statement under the Securities Act and under the Investment Company Act for Open-End Management Investment Companies'' (OMB control number 3235–0307); (5) ''Form N–2, Registration Statement of Closed-End Management Investment Companies'' (OMB control number 3235–0026); (6) ''Form N–3, Registration of Separate Accounts Organized as Management Investment Companies'' (OMB control number 3235–0316); (7) ''Form N–4, Registration Statement of Separate Accounts Organized as Unit Investment Trust'' (OMB control number 3235–0318); (8) ''Form N–6, Registration Statement of Separate Accounts Organized as Unit Investment Trust'' (OMB control number 3235–0503); (9) ''Form N–8B–2, Registration Statement of Unit Investment Trusts Which Are Currently Issuing Securities'' (OMB control number 3235–0186); (10) ''Form S–6, for Registration under the Securities Act of Unit Investment Trusts registered on Form N–8B–2'' (OMB control number 3235–0184); and (11) ''Investment Company Interactive Data'' (OMB control number 3235–0642).

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.

Each requirement to disclose information, offer to provide information, or adopt policies and procedures constitutes a collection of information requirement under the PRA. These collections of information would help increase the likelihood that advisers and funds are prepared to respond to a cybersecurity incident, and collectively would serve the Commission's interest in protecting investors by reducing the risk that a cybersecurity incident could significantly affect a firm's operations and lead to significant harm to clients

[271] *See* 17 CFR 275.203(a)(1); General Instruction 5 of Form ADV Part 2. The proposed requirement is also more technically feasible than an Inline XBRL requirement for the advisers' disclosures, because the IARD system does not currently accommodate Inline XBRL filings.

[272] *See* FINRA Form ADV Guide, *available at https://www.iard.com/sites/iard/files/formADV_guide.pdf.*

[273] 44 U.S.C. 3501 through 3521.

[274] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[275] The paperwork burdens for the rules under section 8(b) of the Investment Company Act are imposed through the forms and reports that are subject to the requirements in these rules and are reflected in the PRA burdens of those documents.

and investors. The Commission staff would also use the collection of information in its examination and oversight program in identifying patterns and trends across registrants. We discuss below the collection of information burdens associated with the proposed rules and rule amendments.

B. Rule 206(4)–9

Proposed rule 206(4)–9 would require an adviser to adopt and implement written policies and procedures that are reasonably designed to address cybersecurity risks.[276] These cybersecurity policies and procedures would need to be tailored based on the complexity of the adviser's business operations and attendant cybersecurity risks. The proposed rule would require policies and procedures that address: (1) Risk assessment, (2) user security and access, (3) information protection, (4) cybersecurity threat and vulnerability management, and (5) cybersecurity incident response and recovery. The proposed rule includes certain minimum activities associated with each of these elements, including requirements for an adviser to identify and oversee any service providers that receive, maintain, or process adviser information, or are otherwise permitted to access its information systems and any information residing therein.

In addition to adopting and implementing such policies and procedures, the proposed rule would require advisers to review and assess, at least annually, the design and effectiveness of their cybersecurity policies and procedures. More specifically, proposed rule 206(4)–9 would require that an adviser at least annually: (1) Review and assess the design and effectiveness of the cybersecurity policies and procedures; and (2) prepare a written report that, at a minimum, describes the review, assessment, and any control tests performed, explains their results, documents any cybersecurity incident that occurred since the date of the last report, and discusses any material changes to the policies and procedures since the date of the last report.[277]

The respondents to these collection of information requirements would be investment advisers that are registered or required to be registered with the Commission. As of October 31, 2021, there were 14,774 investment advisers registered with the Commission. As noted above, these requirements are mandatory, and all registered investment advisers would be subject to the requirements of the proposed rule. Responses provided to the Commission in the context of its examination and oversight program concerning proposed rule 206(4)–9 would be kept confidential subject to the provisions of applicable law. These collections of information would help increase the likelihood that advisers and funds are prepared to respond to a cybersecurity incident, and help protect investors from being significantly harmed by a cybersecurity incident. These collections would also help facilitate the Commission's inspection and enforcement capabilities. We have made certain estimates of the burdens associated with the proposed rule solely for the purpose of this PRA analysis. The table below summarizes the initial and ongoing annual burden and cost estimates associated with the proposed rule's policies and procedures and review and report requirements.

TABLE 1—RULE 206(4)–9 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED RULE 206(4)–9 ESTIMATES					
Adopting and implementing policies and procedures [3].	50	21.67 hours [4]	$396 (blended rate for compliance attorney and assistant general counsel).	$8,581.32	[5] $1,488
Annual review of policies and procedures and report of review.	0	10 hours [6]	$396 (blended rate for compliance attorney and assistant general counsel).	$3,960	[7] $1,984
Total new annual burden per adviser.	.....	31.67 hours	.....	$12,541.32	$3,472
Number of advisers	.....	× 14,774	.....	× 14,774	× 14,774
Total new annual aggregate burden.	.....	320,152.58 hours	.....	$185,285,462	$51,295,328

Notes:

[1] Includes initial burden estimates annualized over a 3-year period.

[2] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff for 2020 ("SIFMA Wage Report"). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

[3] These estimates are based on an average. Some firms may have a lower burden in the case they will be evaluating exiting policies and procedures with respect to any cybersecurity risks and/or incidents, while other firms may be creating new cybersecurity policies and procedures altogether.

[4] Includes initial burden estimates annualized over a three-year period, plus 5 ongoing annual burden hours. The estimate of 25 hours is based on the following calculation: ((50 initial hours/3) + 5 additional ongoing burden hours) = 21.67 hours.

[5] This estimated burden is based on the estimated wage rate of $496/hour, for 3 hours, for outside legal services.

The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

[6] We estimate 10 additional ongoing burden hours.

[7] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. *See supra* note 5 (regarding wage rates with respect to external cost estimates).

[276] *See* proposed rule 206(4)–9; *supra* section II.A (discussing the cybersecurity policies and procedures requirements).

[277] *See* proposed rule 206(4)–9(b).

C. Rule 38a–2

Proposed rule 38a–2 would require a fund to adopt and implement written policies and procedures reasonably designed to address cybersecurity risks.[278] These cybersecurity policies and procedures would address: Risk assessment, user security and access, information protection, threat and vulnerability management, and incident response and recovery. The proposed rule includes certain minimum activities associated with each of these elements, including requirements for the fund to identify and oversee any service providers that receive, maintain, or process fund information, or are otherwise permitted to access its information systems and any information residing therein.

Under the rule, a fund would also, at least annually: (1) Review and assess the design and effectiveness of those policies and procedures; and (2) prepare and provide to the fund's board a written report.[279] The written report would also include an explanation of any control tests performed, any cybersecurity incident that occurred since the date of the last report, and any material changes to the policies and procedures since the date of the last report.

Finally, a fund would need to keep records related to the policies and procedures, written reports, annual review, and any reports provided to the Commission. Specifically, the fund would have to maintain copies for at least five years, the first two years in an easily accessible place, of: (1) Its cybersecurity policies and procedures; (2) copies of written reports provided to its board; (3) records documenting the fund's cybersecurity annual review; (4) any report of a significant fund cybersecurity incident provided to the Commission by its adviser that the proposed rule would require; (5) records documenting the occurrence of a cybersecurity incident, including records related to any response and recovery from such an incident; and (6) and records documenting a fund's cybersecurity risk assessments.[280]

Each requirement to disclose information, offer to provide information, or to adopt policies and procedures constitutes a collection of information requirement under the PRA. The respondents to proposed rule 38a–2 would be registered investment companies and BDCs.[281] We estimate that 14,749 funds would be subject to these proposed rule requirements.[282] The collections of information associated with these requirements would be mandatory, and responses provided to the Commission in the context of its examination and oversight program concerning proposed rule 38a–2 would be kept confidential subject to the provisions of applicable law. These collections of information would help increase the likelihood that funds are prepared to respond to a cybersecurity incident, and help protect investors from being significantly harmed by a cybersecurity incident. These collections would also help facilitate the Commission's inspection and enforcement capabilities. We have made certain estimates of the burdens associated with the proposed rule, as discussed below, solely for the purpose of this PRA analysis. The table below summarizes the initial and ongoing annual burden and cost estimates associated with the proposed rule.

TABLE 2—RULE 38A–2: PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED RULE 38A–2 ESTIMATES					
Adopting and implementing policies and procedures.	60	25 hours [3]	$425 (blended rate for compliance attorney and assistant general counsel).	$10,625	[4] $5,952
Annual review of policies and procedures and report.	9	6 hours [5]	$425 (blended rate for compliance attorney and assistant general counsel).	$2,550	[6] $992
Recordkeeping	1	1 hour	$356 (blended rate for compliance attorney and senior programmer).	$356	$0
Total new annual burden per fund		32 hours		$13,531	$6,944
Number of funds		× 14,749 funds [7]		× 14,749 funds	[8] 7,375
Total new annual aggregate burden.		471,968 hours		$199,568,719	$51,212,000

Notes:

[1] Includes initial burden estimates annualized over a 3-year period.

[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

[3] Includes initial burden estimates annualized over a three-year period, plus 5 ongoing annual burden hours. The estimate of 25 hours is based on the following calculation: ((60 initial hours/3) + 5 additional ongoing burden hours) = 25 hours.

[4] This estimated burden is based on the estimated wage rate of $496/hour, for 12 hours, for outside legal services.

The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

[5] Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 6 hours is based on the following calculation: ((9 initial hours/3) + 3 additional ongoing burden hours) = 6 hours.

[6] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. *See supra* footnote 4 (regarding wage rates with respect to external cost estimates).

[7] Includes all registered investment companies, plus BDCs.

[278] *See* proposed rule 38a–2; *supra* section II.A (discussing the cybersecurity policies and procedures requirements).

[279] For unit investment trusts, the written report would be provided to the principal underwriter or depositor.

[280] For unit investment trusts, copies of materials provided the principal underwriter or depositor similarly would be required to be maintained for at least five years after the end of the fiscal year in which the documents were provided.

[281] *See* proposed rule 38a–2(f) (defining ''fund'').

[282] As of December 2020, we estimate 14,654 registered investment companies and 95 BDCs.

[8] We estimate that 50% of funds will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

D. Rule 204–2

Under section 204 of the Advisers Act, investment advisers registered or required to register with the Commission under section 203 of the Advisers Act must make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Exchange Act), furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is found at 17 CFR 275.204–2 and is mandatory. The Commission staff uses the collection of information in its examination and oversight program. As noted above, responses provided to the Commission in the context of its examination and oversight program concerning the proposed amendments to rule 204–2 would be kept confidential subject to the provisions of applicable law.

As part of the proposed cybersecurity risk management rules, we are proposing corresponding amendments to rule 204–2, the books and records rule. The proposed amendments would require advisers to retain: (1) A copy of their cybersecurity policies and procedures formulated pursuant to proposed rule 206(4)–9 that is in effect, or at any time within the past five years was in effect; (2) a copy of the adviser's written report documenting the annual review of its cybersecurity policies and procedures pursuant to proposed rule 206(4)–9 in the last five years; (3) a copy of any Form ADV–C filed by the adviser under rule 204–6 in the last 5 years; (4) records documenting the occurrence of any cybersecurity incident, as defined in rule 206(4)–9(c), occurring in the last five years, including records related to any response and recovery from such an incident; and (5) records documenting any risk assessment conducted pursuant to the cybersecurity policies and procedures required by rule 206(4)–9(a)(1) in the last five years.[283] These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities.

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. All such advisers will be subject to the proposed amendments to rule 204–2. As of October 31, 2021, there were 14,774 advisers that would be subject to these policies and procedures requirement. In our most recent Paperwork Reduction Act submission for rule 204–2, we estimated for rule 204–2 a total annual aggregate hour burden of 2,764,563 hours, and the total annual aggregate external cost burden is $175,980,426.[284] The table below summarizes the initial and ongoing annual burden estimates associated with the proposed amendments to rule 204–2.[285]

TABLE 3—RULE 204–2 PRA ESTIMATES

	Internal hour burden		Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES FOR RULE 204–2 AMENDMENTS					
Retention of cybersecurity policies and procedures.	1	×	$68 (blended rate for general clerk and compliance clerk).	$68	$0
Total burden per adviser				$68	0
Total number of affected advisers	× 14,774			× 14,774	0
Sub-total burden	14,774 hours			$1,004,632	0
Retention of written report documenting annual review.	1	×	$68 (blended rate for general clerk and compliance clerk).	$68	0
Total annual burden per adviser	1			$68	0
Total number of affected advisers	× 14,774			× 14,774	0
Sub-total burden	14,774 hours			$1,004,632	0
Retention of copy of any Form ADV–C filed in last 5 years.	1	×	$68 (blended rate for general clerk and compliance clerk).	$68	0
Total annual burden per adviser	1			$68	0
Total number of affected advisers	× 14,774			× 14,774	0
Sub-total burden	14,774 hours			$1,004,632	0
Retention of records documenting a cybersecurity incident.	1	×	$68 (blended rate for general clerk and compliance clerk).	$68	0
Total annual burden per adviser	1			$68	0
Total number of affected advisers	× 14,774			× 14,774	0
Sub-total burden	14,774 hours			$1,004,632	0

[283] *See* proposed rule 204–2(a)(17)(i) through (vii).

[284] Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204–2, OMB Report, OMB 3235–0278 (Aug. 2021).

[285] We estimate the hourly wage rate for compliance clerk is $70 and a general clerk is $62. The hourly wages used are from the SIFMA Wage Report.

TABLE 3—RULE 204–2 PRA ESTIMATES—Continued

	Internal hour burden		Wage rate	Internal time costs	Annual external cost burden
Retention of records documenting an adviser's cybersecurity risk assessment.	1	×	$68 (blended rate for general clerk and compliance clerk).	$68	0
Total annual burden per adviser	1	....		$68	0
Total number of affected advisers	× 14,774	....		× 14,774	0
Sub-total burden	14,774 hours	....		$1,004,632	0
Total annual aggregate burden of rule 204–2 amendments.	73,870 hours	....		$5,023,160	0
Current annual estimated aggregate burden of rule 204–2.	2,764,563 hours	....		$175,980,426	0
Total annual aggregate burden of rule 204–2.	2,838,433 hours	....		$181,003,586	0

E. Rule 204–6

Proposed rule 204–6 would require investment advisers to report on new Form ADV–C a significant adviser cybersecurity incident or a significant fund cybersecurity incident. The rule would define a significant adviser cybersecurity incident as a cybersecurity incident, or a group of related incidents, that significantly disrupts or degrades the adviser's ability, or the ability of a private fund client of the adviser, to maintain critical operations, or leads to the unauthorized access or use of adviser information, where the unauthorized access or use of such information results in: (1) Substantial harm to the adviser, or (2) substantial harm to a client, or an investor in a private fund, whose information was accessed.[286] Proposed rule 204–6 would also require advisers to amend promptly any previously filed Form ADV–C in the event information reported on the form becomes materially inaccurate; if new material information about a previously reported incident is discovered; and after resolving a previously reported incident or closing an internal investigation pertaining to pertaining to a previously disclosed incident.

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. As noted above, this requirement is mandatory, and all registered investment advisers will be subject to the requirements of the proposed rule. Responses provided to the Commission would be kept confidential subject to the provisions of applicable law. This collection of information would help the Commission's examination and oversight program efforts in identifying patterns and trends across registrants regarding such incidents. As of October 31, 2021, there were 14,774 registered advisers that would be subject to this reporting requirement. The table below summarizes the initial and ongoing annual burden and cost estimates associated with the proposed rule's reporting requirement.

TABLE 4—RULE 204–6 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours		Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES						
Making a determination of significant cybersecurity incident.	3	3 hours [1]	×	$353 (blended rate for assistant general counsel, compliance manager and systems analyst).	$1,059	[2] $1,488
Amending Form ADV–C as required *(e.g.,* if any of the information previously filed on Form ADV–C becomes materially inaccurate).	1	1 hour	×	$396 (blended rate for assistant general counsel and compliance manager).	$396	[3] $496
Total new annual burden per adviser.		4 hours	....		$1,455	$1,984
Number of advisers		× 14,774	....		× 14,774	× 14,774
Total new aggregate annual burden.		59,096 hours	....		$21,496,170	$29,311,616

Notes:

[1] Includes initial burden estimates annualized over a three-year period, plus 2 ongoing annual burden hours. The estimate of 6 hours is based on the following calculation: ((3 initial hours/3) + 2 additional ongoing burden hours) = 3 hours.

[2] This estimated burden is based on the estimated wage rate of $496/hour, for 3 hours, for outside legal services.

The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

[3] This estimated burden is based on the estimated wage rate of $496/hour, for 1 hour, for outside legal services.

[286] *See* proposed rule 204–6(b).

F. Form ADV–C

The Commission is proposing a new Form ADV–C to require an adviser to provide information regarding a significant cybersecurity incident in a structured format through a series of check-the-box and fill-in-the-blank questions. Proposed Form ADV–C would require advisers to report certain information regarding a significant cybersecurity incident in order to allow the Commission and its staff to understand the nature and extent of the cybersecurity incident and the adviser's response to the incident. We believe that collecting information in a structured format would enhance the Commission's and its staff's ability to effectively carry out the risk-based examination program and other risk assessment and monitoring activities. The structured format would also assist the Commission and its staff in assessing trends in cybersecurity incidents across the industry.

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. As noted above, the collection of this information is mandatory for all registered advisers. Information filed on Form ADV–C would be kept confidential subject to the provisions of applicable law. As of October 31, 2021, there were 14,774 registered advisers that would be subject to this reporting requirement. The table below summarizes the initial and ongoing annual burden and cost estimates associated with filing proposed Form ADV–C.

TABLE 5—FORM ADV–C PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours		Wage rate	Internal time costs	Annual external cost burden
PROPOSED FORM ADV–C ESTIMATES						
Form ADV–C	3	1.5 hours [1]	×	$396 (blended rate for assistant general counsel and compliance manager).	$594	[2] $496
Total new annual burden per adviser.		1.5 hours				$496
Number of advisers		× 14,774			× 14,774	× 14,774
Total new aggregate annual burden.		22,161 hours			$8,775,756	$7,327,904

Notes:
[1] Includes initial burden estimates annualized over a three-year period, plus 0.5 ongoing annual burden hours. The estimate of 1.5 hours is based on the following calculation: ((3 initial hours/3) + 0.5 additional ongoing burden hours) = 1.5 hours.
[2] This estimated burden is based on the estimated wage rate of $496/hour, for 1 hour, for outside legal services.
The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

G. Form ADV

Form ADV is the investment adviser registration form under the Advisers Act. Part 1 of Form ADV contains information used primarily by Commission staff, and Part 2A is the client brochure. Part 2B requires advisers to create brochure supplements containing information about certain supervised persons. Part 3: Form CRS (relationship summary) requires certain registered investment advisers to prepare and file a relationship summary for retail investors. We use the information on Form ADV to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients and investors use certain of the information to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs. The collection of information is necessary to provide advisory clients, prospective clients, other market participants and the Commission with information about the investment adviser and its business, conflicts of interest and personnel. Rule 203–1 under the Advisers Act requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–4 under the Advisers Act requires certain investment advisers exempt from registration with the Commission (''exempt reporting advisers'' or ''ERAs'') to file reports with the Commission by completing a limited number of items on Form ADV. Rule 204–1 under the Advisers Act requires each registered and exempt reporting adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through IARD. The paperwork burdens associated with rules 203–1, 204–1, and 204–4 are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information. These collections of information are found at 17 CFR 275.203–1, 275.204–1, 275.204–4 and 279.1 (Form ADV itself) and are mandatory. Responses are not kept confidential.

We are proposing amendments to Form ADV to provide clients and prospective clients with information regarding an adviser's cybersecurity risks and significant cybersecurity incidents that have occurred in the past two years. Specifically, the proposed amendments would add a new Item 20 entitled ''Cybersecurity Risks and Incidents'' to Form ADV's narrative brochure, or Part 2A. The brochure, which is publicly available and the primary client-facing disclosure document, contains information about the investment adviser's business practices, fees, risks, conflicts of interest, and disciplinary events. We believe the narrative format of the brochure would allow advisers to present clear and meaningful cybersecurity disclosure to their clients and prospective clients. Advisers would be required to, in plain English, describe cybersecurity risks that could materially affect the advisory services they offer and describe how they assess, prioritize, and address cybersecurity risks created by the nature and scope of their business. The proposed amendments would also require advisers to describe any significant adviser cybersecurity incidents that have occurred within the last two years.

The collection of information is necessary to improve information available to us and to the general public about advisers' cybersecurity risks and

incidents. Our staff would use this information to help prepare for examinations of investment advisers. This information would be particularly useful for staff in reviewing an adviser's compliance with the proposed rulemakings and rule amendments. We are not proposing amendments to Parts 1 or 3 of Form ADV.

The respondents to current Form ADV are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers.[287] Based on the IARD system data as of October 31, 2021, approximately 14,774 investment advisers were registered with the Commission, and 4,985 exempt reporting advisers file reports with the Commission. The amendments we are proposing would increase the information requested in Part 2A of Form ADV for registered investment advisers. Because exempt reporting advisers are not required to complete Form ADV Part 2A, they would not be subject to the proposed amendments to Form ADV Part 2A and would therefore not be subject to this collection of information.[288] However, these exempt reporting advisers are included in the PRA for purposes of updating the overall Form ADV information collection. In addition, the burdens associated with completing Part 3 are included in the PRA for purposes of updating the overall Form ADV information collection.[289] Based on the prior revision of Form ADV, we estimated the annual compliance burden to comply with the collection of information requirement of Form ADV is 433,004 burden hours and an external cost burden estimate of $14,125,083.[290] We propose the following changes to our PRA methodology for Form ADV:

- *Form ADV Parts 1 and 2.* Form ADV PRA has historically calculated a per adviser per year hourly burden for Form ADV Parts 1 and 2 for each of (1) the initial burden and (2) the ongoing burden, which reflects advisers' filings of annual and other-than-annual updating amendments. We noted in previous PRA amendments that most of the paperwork burden for Form ADV Parts 1 and 2 would be incurred in the initial submissions of Form ADV. However, recent PRA amendments have continued to apply the total initial hourly burden for Parts 1 and 2 to all currently registered or reporting RIAs and ERAs, respectively, in addition to the estimated number of new advisers expected to be registering or reporting with the Commission annually. We believe that the total initial hourly burden for Form ADV Parts 1 and 2 going forward should be applied only to the estimated number of expected new advisers annually. This is because currently registered or reporting advisers have generally already incurred the total initial burden for filing Form ADV for the first time. On the other hand, the estimated expected new advisers will incur the full total burden of initial filing of Form ADV, and we believe it is appropriate to apply this total initial burden to these advisers. We propose to continue to apply any new initial burdens resulting from proposed amendments to Form ADV Part 2, as applicable, to all currently registered or reporting investment advisers plus all estimated expected new RIAs and ERAs annually.

Table 6 below summarizes the burden estimates associated with the proposed amendments to Form ADV Part 2A. The proposed new burdens take into account changes in the numbers of advisers since the last approved PRA for Form ADV, and the increased wage rates due to inflation.

TABLE 6—FORM ADV PRA ESTIMATES

	Internal initial burden hours	Internal annual amendment burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden[3]
PROPOSED AMENDMENTS TO FORM ADV					
RIAs (burden for Parts 1 and 2, not including private fund reporting)[4]					
Proposed addition (per adviser) to Part 2A (Item 20).	3 hours	0.2 hours	$279.50 per hour (blended rate for senior compliance examiner and compliance manager)[5].	3.2 hours × $279.50 = $894.4.	1 hour of external legal services ($496) for ¼ of advisers that prepare Part 2; 1 hour of external compliance consulting services ($739) for ½ of advisers that prepare Part 2.[6]
Current burden per adviser[7].	29.72 hours[8]	11.8 hours[9]	$273 per hour (blended rate for senior compliance examiner and compliance manager).	(29.72 + 11.8) × $273 = $11,334.96.	$2,069,250 aggregated (previously presented only in the aggregate)[10]
Revised burden per adviser.	29.72 hours + 3 hours = 32.72 hours.	0.2 hours + 11.8 hours = 12 hours.	$279.50 (blended rate for senior compliance examiner and compliance manager).	(32.72 + 12) × $279.5 = $12,499.24.	$4,689.50.[11]
Total revised aggregate burden estimate.	61,140.08[12]	183,456 hours[13]	Same as above	(61,140.08 + 183,456) × $279.5 = $68,364,604.40.	$9,701,372.[14]

[287] An exempt reporting adviser is an investment adviser that relies on the exemption from investment adviser registration provided in either section 203(*l*) of the Advisers Act because it is an adviser solely to one or more venture capital funds or section 203(m) of the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than $150 million.

[288] An exempt reporting adviser is not a registered investment adviser and therefore would not be subject to the proposed amendments to Item 5 of Form ADV Part 1A. Exempt reporting advisers are required to complete a limited number of items in Part 1A of Form ADV (consisting of Items 1, 2.B., 3, 6, 7, 10, 11, and corresponding schedules), and are not required to complete Part 2.

[289] *See* Updated Supporting Statement for PRA Submission for Amendments to Form ADV under the Investment Advisers Act of 1940 (''Approved Form ADV PRA'').

[290] *See* Investment Adviser Marketing, Final Rule, Investment Advisers Act Release No. 5653 (Dec. 22, 2020) [81 FR 60418 (Mar. 5, 2021)] and corresponding submission to the Office of Information and Regulatory Affairs at *reginfo.gov* (''2021 Form ADV PRA'').

TABLE 6—FORM ADV PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual amendment burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden [3]
RIAs (burden for Part 3) [15]					
No proposed changes	.....	.....	.....	.....	
Current burden per RIA	20 hours, amortized over three years = 6.67 hours [16].	1.58 hours [17]	$273 (blended rate for senior compliance examiner and compliance manager).	$273 × (6.67 + 1.71) = $2,287.74.	$2,433.74 per adviser.[18]
Total updated aggregate burden estimate.	66,149.59 hours [19]	14,573.92 hours [20]	Same as above	$22,562,221 (($279.50 × (66,149.59 hours + 14,573.92 hours)).	$8,157,555.[21]
ERAs (burden for Part 1A, not including private fund reporting) [22]					
No proposed changes Current burden per ERA	3.60 hours [23]	1.5 hours + final filings [24]	$273 (blended rate for senior compliance examiner and compliance manager).	Wage rate × total hours (see below).	$0
Total updated aggregate burden estimate.	1,245.6 [25]	8,033.6 hours [26]	Same as above	$2,593,536.40 ($279.5 × (1,245.6 + 8,033.6 hours)).	$0.
Private Fund Reporting [27]					
No proposed changes	.....	.....	.....	.....	
Current burden per adviser to private fund.	1 hour per private fund [28].	N/A–included in the existing annual amendment reporting burden for ERAs.	$273 (blended rate for senior compliance examiner and compliance manager).	.....	Cost of $46,865.74 per fund, applied to 6% of RIAs that report private funds.[29]
Total updated aggregate burden estimate.	1,150 hours [30]	N/A	Same as above	$3,978,123.5 ($279.5 × 14,233 hours)).	$15,090,768.30.[31]
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current per adviser burden/external cost per adviser.	23.82 hours [32]	.....	.....	23.82 hours × $273 = $6,502.86 per adviser cost of the burden hour.	$777.[33]
Revised per adviser burden/external cost per adviser.	16.28 hours [34]	.....	.....	16.28 hours × $279.5 = $4,550.26 per adviser cost of the burden hour.	$1,598.03.[35]
Current aggregate burden estimates.	433,004 initial and amendment hours annually [36]			433,004 × $273 = $118,210,092 aggregate cost of the burden hour.	$14,125,083.[37]
Revised aggregate burden estimates.	335,748.793 [38] Initial and amendment hours annually			290,831.73 × $279.5 = $81,287,468.54 aggregate cost of the burden hour.	$32,949,695.30.[39]

Notes:

[1] This column estimates the hourly burden attributable to annual and other-than-annual updating amendments to Form ADV, plus RIAs' ongoing obligations to deliver codes of ethics to clients.

[2] As with Form ADV generally, and pursuant to the currently approved PRA (*see* 2021 Form ADV PRA), we expect that for most RIAs and ERAs, the performance of these functions will most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. For RIAs and ERAs that do not already have a senior compliance or a compliance manager, we expect that a person performing a similar function would have similar hourly costs. The estimated wage rates in connection with the proposed PRA estimates are adjusted for inflation from the wage rates used in the currently approved PRA analysis.

[3] External fees are in addition to the projected hour per adviser burden. Form ADV has a one-time initial cost for outside legal and compliance consulting fees in connection with the initial preparation of Parts 2 and 3 of the form. In addition to the estimated legal and compliance consulting fees, investment advisers of private funds incur one-time costs with respect to the requirement for investment advisers to report the fair value of private fund assets.

[4] Based on Form ADV data as of October 31, 2021, we estimate that there are 14,774 RIAs (''current RIAs'') and 514 advisers that are expected to become RIAs annually (''newly expected RIAs'').

[5] The $279.50 wage rate reflects current estimates from the SIFMA Wage Report of the blended hourly rate for a senior compliance examiner ($243) and a compliance manager ($316). ($243 + $316) /2 = $279.5.

[6] We estimate that a quarter of RIAs would seek the help of outside legal services and half would seek the help of compliance consulting services in connection with the proposed amendments to Form ADV Part 2. This is based on previous estimates and ratios we have used for advisers we expect to use external services for initially preparing various parts of Form ADV. *See* 2020 Form ADV PRA Renewal (the subsequent amendment to Form ADV described in the 2021 Form ADV PRA did not change that estimate). Because the SIFMA Wage Report does not include a specific rate for outside compliance consultant, we are proposing to use the rates in the SIFMA Wage Report for outside management consultant, as we have done in the past when estimating the rate of outside compliance counsel. We are adjusting these external costs for inflation, using the currently estimated costs for outside legal counsel and outside management consultants in the SIFMA Wage Report: $495 per hour for outside counsel, and $739 per hour for outside management consultant (compliance consultants).

[7] Per above, we are proposing to revise the PRA calculation methodology to apply the full initial burden only to expected RIAs, as we believe that current RIAs have generally already incurred the burden of initially preparing Form ADV.

[8] *See* 2020 Form ADV PRA Renewal (stating that the estimate average collection of information burden per adviser for Parts 1 and 2 is 29.22 hours, prior to the most recent amendment to Form ADV). *See also* 2021 Form ADV PRA (adding 0.5 hours to the estimated initial burden for Part 1A in connection with the most recent amendment to Form ADV). Therefore, the current estimated average initial collection of information hourly burden per adviser for Parts 1 and 2 is 29.72 hours (29.22 + 0.5 = 29.72).

[9] The currently approved average total annual burden for RIAs attributable to annual and other-than-annual updating amendments to Form ADV Parts 1 and 2 is 10.5 hours per RIA, plus 1.3 hours per year for each RIA to meet its obligation to deliver codes of ethics to clients (10.5 + 1.3 = 11.8 hours per adviser). *See* 2020 Form ADV PRA Renewal (these 2020 hourly estimates were not affected by the 2021 amendments to Form ADV). As we explained in previous PRAs, we estimate that each RIA filing Form ADV Part 1 will amend its form 2 times per year, which consists of one interim updating amendment (at an estimated 0.5 hours per amendment), and one annual updating amendment (at an estimated 8 hours per amendment), each year. We also explained that we estimate that each RIA will, on average, spend 1 hour per year making interim amendments to brochure supplements, and an additional 1 hour per year to prepare brochure supplements as required by Form ADV Part 2. *See id.*

[10] *See* 2020 Form ADV PRA Renewal (the subsequent amendment to Form ADV described in the 2021 Form ADV PRA did not affect that estimate).

[11] External cost per RIA includes the external cost for initially preparing Part 2, which we have previously estimated to be approximately 10 hours of outside legal counsel for a quarter of RIAs, and 8 hours of outside management consulting services for half of RIAs. *See* 2020 Form ADV Renewal (these estimates were not affected by subsequent amendments to Form ADV). We add to this burden the estimated external cost associated with the proposed amendment (an additional hour of each, bringing the total to 11 hours and 9 hours, respectively, for ¼ and ½ of RIAs, respectively). (((.25 × 14,774 RIAs) × ($496 × 11 hours)) + ((0.50 × 14,774 RIAs) × ($739 × 9 hours))) /14,774 RIAs = $4,689.50 per adviser.

[12] Per above, we are proposing to revise the PRA calculation methodology for current RIAs to not apply the full initial burden to current RIAs, as we believe that current RIAs have generally already incurred the initial burden of preparing Form ADV. Therefore, we calculate the initial burden associated with complying with the proposed amendment of 3 initial hours × 14,774 current RIAs = 44,322 initial hours in the first year aggregated for current RIAs. We are not amortizing this burden because we believe current advisers will incur it in the first year. For expected RIAs, we estimate that they will incur the full revised initial burden, which is 32.72 hours per RIA. Therefore, 32.72 hours × 514 expected RIAs = 16,818.08 aggregate hours for expected RIAs. We do not amortize this burden for expected new RIAs because we expect a similar number of new RIAs to incur this initial burden each year. Therefore, the total revised aggregate initial burden for current and expected RIAs is 44,322 hours + 16,818.08 hours = 61,140.08 aggregate initial hours.

[13] 12 amendment hours × (14,774 current RIAs + 514 expected new RIAs) = 183,456 aggregate amendment hours.

[14] Per above, for current RIAs, we are proposing to not apply the currently approved external cost for initially preparing Part 2, because we believe that current RIAs have already incurred that initial external cost. For current RIAs, therefore, we are applying only the external cost we estimate they will incur in complying with the proposed amendment. Therefore, the revised total burden for current RIAs is (((.25 × 14,774 RIAs) × ($496 × 1 hour)) + ((0.50 × 14,774 RIAs) × ($739 × 1 hour))) /14,774 RIAs = $7,290,969 aggregated for current RIAs, We do not amortize this cost for current RIAs because we expect current RIAs will incur this initial cost in the first year. For expected RIAs, we apply the currently approved external cost for initially preparing Part 2 plus the estimated external cost for complying with the proposed amendment. Therefore, $4,689.50 per expected RIA × 514 = $2,410,403 aggregated for expected RIAs. We do not amortize this cost for expected new RIAs because we expect a similar number of new RIAs to incur this external cost each year. $7,290,969 aggregated for current RIAs + $2,410,403 aggregated for expected RIAs = $9,701,372 aggregated external cost for RIAs.

[15] Even though we are not proposing amendments to Form ADV Part 3 (''Form CRS''), the burdens associated with completing Part 3 are included in the PRA for purposes of updating the overall Form ADV information collection. Based on Form ADV data as of October 31, 2021, we estimate that 8,877 current RIAs provide advice to retail investors and are therefore required to complete Form CRS, and we estimate an average of 347 expected new RIAs to be advising retail advisers and completing Form CRS for the first time annually.

[16] *See* Form CRS Relationship Summary; Amendments to Form ADV, Investment Advisers Act Release No. 5247 (Jun. 5, 2019) [84 FR 33492 (Sep. 10, 2019)] (''2019 Form ADV PRA''). Subsequent PRA amendments for Form ADV have not adjusted the burdens or costs associated with Form CRS. Because Form CRS is still a new requirement for all applicable RIAs, we have, and are continuing to, apply the total initial amendment burden to all current and expected new RIAs that are required to file Form CRS, and amortize that initial burden over three years for current RIAs.

[17] As reflected in the currently approved PRA burden estimate, we stated that we expect advisers required to prepare and file the relationship summary on Form ADV Part 3 will spend an average 1 hour per year making amendments to those relationship summaries and will likely amend the disclosure an average of 1.71 times per year, for approximately 1.58 hours per adviser. *See* 2019 Form ADV PRA (these estimates were not amended by the 2021 amendments to Form ADV).

[18] *See* 2020 Form ADV PRA Amendment (this cost was not affected by the subsequent amendment to Form ADV and was not updated in connection with that amendment; while this amendment did not break out a per adviser cost, we calculated this cost from the aggregate total and the number of advisers we estimated prepared Form CRS). Note, however, that in our 2020 Form ADV PRA Renewal, we applied the external cost only to expected new retail RIAs, whereas we had previously applied the external cost to current and expected retail RIAs. We believe that since Form CRS is still a newly adopted requirement, we should continue to apply the cost to both current and expected new retail RIAs. *See* 2019 Form ADV PRA.

[19] 8,877 current RIAs × 6.67 hours each for initially preparing Form CRS = 59,209.59 aggregate hours for current RIAs initially filing Form CRS. For expected new RIAs initially filing Form CRS each year, we are not proposing to use the amortized initial burden estimate, because we expect a similar number of new RIAs to incur the burden of initially preparing Form CRS each year. Therefore, 347 expected new RIAs × 20 initial hours for preparing Form CRS = 6,940 aggregate initial hours for expected RIAs. 59,209.59 hours + 6,940 hours = 66,149.59 aggregate hours for current and expected RIAs to initially prepare Form CRS.

[20] 1.58 hours × (8,877 current RIAs updating Form CRS + 347 expected new RIAs updating Form CRS) = 14,573.92 aggregate amendment hours per year for RIAs updating Form CRS.

[21] We have previously estimated the initial preparation of Form CRS would require 5 hours of external legal services for an estimated quarter of advisers that prepare Part 3, and; 5 hours of external compliance consulting services for an estimated half of advisers that prepare Part 3. *See* 2020 PRA Renewal (these estimates were not amended by the most recent amendment to Form ADV). The hourly cost estimate of $496 and $739 for outside legal services and management consulting services, respectively, are based on an inflation-adjusted figure in the SIFMA Wage Report. Therefore, (((.25 × 8,877 current RIAs preparing Form CRS) × ($496 × 5 hours)) + ((0.50 × 8,877 current RIAs preparing Form CRS) × ($739 × 5 hours))) = $21,903,997.50. For current RIAs, since this is still a new requirement, we amortize this cost over three years for a per year initial external aggregated cost of $7,301,332.50. For expected RIAs that we expect would prepare Form CRS each year, we use the following formula: (((.25 × 347 expected RIAs preparing Form CRS) × ($496 × 5 hours)) + ((0.50 × 347 expected RIAs preparing Form CRS) × ($739 × 5 hours))) = $856,222.50 aggregated cost for expected RIAs. We are not amortizing this initial cost because we estimate a similar number of new RIAs would incur this initial cost in preparing Form CRS each year, $7,301,332.50 + $856,222.50 = $8,157,555 aggregate external cost for current and expected RIAs to initially prepare Form CRS.

[22] Based on Form ADV data as of October 31, 2021, we estimate that there are 4,985 currently reporting ERAs (''current ERAs''), and an average of 346 expected new ERAs annually (''expected ERAs'').

[23] *See* 2021 Form ADV PRA.

[24] The previously approved average per adviser annual burden for ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2021 Form ADV PRA. As we have done in the past, we add to this burden the burden for ERAs making final filings, which we have previously estimated to be 0.1 hour per applicable adviser, and we estimate that an expected 371 current ERAs will prepare final filings annually, based on Form ADV data as of December 2020.

[25] For current ERAs, we are proposing to not apply the currently approved burden for initially preparing Form ADV, because we believe that current ERAs have already incurred this burden. For expected ERAs, we are applying the initial burden of preparing Form ADV of 3.6 hours. Therefore, 3.6 hours × 346 expected new ERAs per year = 1,245.6 aggregate initial hours for expected ERAs. For these expected ERAs, we are not proposing to amortize this burden, because we expect a similar number of new ERAs to incur this burden each year. Therefore, we estimate 1,245.6 aggregate initial annual hours for expected ERAs.

[26] The previously approved average total annual burden of ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2020 Form ADV Renewal (this estimate was not affected by the subsequent amendment to Form ADV). As we have done in the past, we added to this burden the currently approved burden for ERAs making final filings of 0.1 hour, and multiplied that by the number of final filings we are estimating ERAs would file per year (371 final filings based on Form ADV data as of December 2020). (1.5 hours × 4,985 currently reporting ERAs) + (0.1 hour × 371 final filings) = 7,514.6 updated aggregated hours for currently reporting ERAs. For expected ERAs, the aggregate burden is 1.5 hours for each ERA attributable to annual and other-than-annual updating amendments to Form ADV × 346 expected new ERAs = 519 annual aggregated hours for expected new ERAs updating Form ADV (other than for private fund reporting). The total aggregate amendment burden for ERAs (other than for private fund reporting) is 7,514.6 + 519 = 8,033.6 hours.

[27] Based on Form ADV data as of October 31, 2021, we estimate that 5,232 current RIAs advise 43,501 private funds, and expect an estimated 136 new RIAs will advise 407 reported private funds per year. We estimate that 4,959 current ERAs advise 23,476 private funds, and estimate an expected 372 new ERAs will advise 743 reported private funds per year. Therefore, we estimate that there are 66,977 currently reported private funds reported by current private fund advisers (43,501 + 23,476), and there will be annually 1,150 new private funds reported by expected private fund advisers (407 + 743). The total number of current and expected new RIAs that report or are expected to report private funds is 5,368 (5,232 current RIAs that report private funds + 136 expected RIAs that would report private funds).

[28] *See* 2020 Form ADV PRA Renewal (this per adviser burden was not affected by subsequent amendments to Form ADV).

[29] We previously estimated that an adviser without the internal capacity to value specific illiquid assets would obtain pricing or valuation services at an estimated cost of $37,625 each on an annual basis. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. IA–3221 (Jun. 22, 2011) [76 FR 42950 (Jul. 19, 2011)]. However, because we estimated that external cost in 2011, we are proposing to use an inflation-adjusted cost of $46,865.74, based on the CPI calculator published by the Bureau of Labor Statistics at *https://www.bls.gov/data/inflation_calculator.htm.* As with previously approved PRA methodologies, we continue to estimate that 6% of RIAs have at least one private fund client that may not be audited. See 2020 Form ADV PRA Renewal.

[30] Per above, for currently reported private funds, we are proposing to not apply the currently approved burden for initially reporting private funds on Form ADV, because we believe that current private fund advisers have already incurred this burden. For the estimated 1,150 new private funds annually of expected private fund advisers, we calculate the initial burden of 1 hour per private fund. 1 hour per expected new private fund × 1,150 expected new private funds = 1,150 aggregate hours for expected new private funds. For these expected new private funds, we are not proposing to amortize this burden, because we expect new private fund advisers to incur this burden with respect to new private funds each year. Therefore, we estimate 1,150 aggregate initial hours for expected private fund advisers.

[31] As with previously approved PRA methodologies, we continue to estimate that 6% of registered advisers have at least one private fund client that may not be audited, therefore we estimate that the total number of audits for current and expected RIAs is 6% × 5,368 current and expected RIAs reporting private funds or expected to report private funds = 322.08 audits. We therefore estimate that approximately 322 registered advisers incur costs of $46,865.74 each on an annual basis (see note 29 describing the cost per audit), for an aggregate annual total cost of $15,090,768.30.

[32] 433,004 currently approved burden hours /18,179 advisers (current and expected annually) = 23.82 hours per adviser. *See* 2021 Form ADV PRA.

[33] $14,125,083 currently approved aggregate external cost /18,179 advisers (current and expected annually) = $777 blended average external cost per adviser.

[34] 335,748.79 aggregate annual hours for current and expected new advisers (see infra note [38]) /(14,774 current RIAs + 514 expected RIAs + 4,985 current ERAs + 346 expected ERAs) = 16.28 blended average hours per adviser.

[35] $32,949,695.30 aggregate external cost for current and expected new advisers (see infra note [39]) /(20,619 advisers current and expected annually) = $1,598.03 blended average hours per adviser.

[36] *See* 2021 Form ADV PRA.

[37] *See* 2021 Form ADV PRA.

[38] 61,140.08 hours + 183,456 hours + 66,149.59 hours + 14,573.92 hours + 1,245.6 + 8,033.6 hours + 1,150 hours = 335,748.79 aggregate annual hours for current and expected new advisers.

[39] $9,701,372 + $8,157,555 + $15,090,768.30 = $32,949,695.30.

H. Rule 204–3

Rule 204–3, the ''brochure rule,'' requires an investment adviser to deliver its brochure and brochure supplements to its new clients or prospective clients before or at the start of the advisory relationship and to deliver annually thereafter the full updated brochure or a summary of material changes to its brochure. The rule also requires that advisers deliver an amended brochure or brochure supplement (or just a statement describing the amendment) to clients only when disciplinary information in the brochure or supplement becomes materially inaccurate. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Advisers registered with the Commission are required to prepare and electronically file firm brochures through the IARD.

Our proposed amendments to rule 204–3 would require an adviser to deliver interim brochure amendments promptly to existing clients if the adviser adds disclosure of a cybersecurity incident to its brochure or materially revises information already disclosed in its brochure about such an incident. We believe that requiring an adviser to deliver the brochure amendment promptly would enhance investor protection by enabling clients to take protective or remedial measures to the extent appropriate. It would also assist investors in determining whether their engagement of that particular adviser remains appropriate and consistent with their investment objectives.

The collection of information the brochure rule requires is necessary for several reasons. For example, it enables the client or prospective client to evaluate the adviser's background and qualifications, and to determine whether the adviser's services and practices are appropriate for that client. It also informs the client of the nature of the adviser's business, which may inform or limit the client's rights under the advisory contract. The information that rule 204–3 requires to be contained in the brochure is used by the Commission and staff in its enforcement, regulatory, and examination programs.

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. As noted above, the collection of this information is mandatory for all registered advisers. Responses are not kept confidential. As of October 31, 2021, there were 14,774 registered advisers that would be subject to this brochure requirement. The table below summarizes the initial and ongoing annual burden and cost estimates associated with the proposed rule's reporting requirement.

Table 7 below summarizes the initial and ongoing annual burden estimates associated with the proposed amendments to rule 204–3.

TABLE 7—RULE 204–3 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours		Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES						
Annual delivery of brochure	[1] 1.66	1.66 hours	×	$64 (general clerk)	$106.24	$0
Interim delivery of updates to disciplinary action [2].	[3] 0.1	0.1 hour	×	$64 (general clerk)	$6.40	0
Interim delivery of updates to cybersecurity incidents.	[4] 0.1	0.1 hour	×	$64 (general clerk)	$6.40	0
Supplement tracking systems [5]	[6] 200	200 hours	×	$64 (general clerk)	$12,800	0
Total new annual burden per adviser		201.86 hours	....		$12,919.04	
Number of advisers		×14,774	....		×14,774	
Total new aggregate annual burden		2,982,279.64 hours.	....		$190,865,897	

Notes:

[1] We continue to estimate that, with a bulk mailing, an adviser will require no more than 0.02 hours to send the adviser's brochure or summary of material changes to each client, or an annual burden of 1.66 hours per adviser. (0.02 hours per client x 83 clients per adviser based on IARD data as of October 31, 2021) = approximately 1.66 hours per adviser. We note that the burden for preparing brochures is already incorporated into a separate burden estimate for Form ADV. We expect that most advisers will make their annual delivery as part of a mailing of an account statement or other periodic report they already make to clients; therefore, we estimate that the additional burden will be adding a few pages to the mailing.

[2] See approved rule 204–3 PRA.

[3] This is the previously approved burden estimate for interim delivery of updates to disciplinary action on Form ADV. We are not changing this estimate.

[4] This relates only to the amount of time it will take advisers to deliver interim updates to clients, as required by the proposed rule amendments. The burden for preparing interim updates is already incorporated into a separate burden estimate for Form ADV. This mailing may not be included with a mailing of a statement or other periodic report; therefore, we estimate that it will take slightly more time to deliver interim updates than to deliver the annual brochure or summary of material changes.

[5] We estimate that large advisers will need to design and implement systems to track changes in supervised persons providing investment advice to particular clients. We do not expect that such systems will be necessary for small advisers or medium advisers.

For purposes of the estimates in this section, we have categorized small advisers as those with 10 or fewer employees, medium-sized advisers as those with between 11 and 1,000 employees, and large advisers as those with over 1,000 employees. According to IARD data, only 1.70% of medium advisers report in response to Form ADV, Part 1A, Item 5.B.(1) that more than 250 employees perform investment advisory functions.

[6] See approved rule 204–3 PRA. This includes estimated time for large advisers to design and implement systems to track that the right supplements are delivered to the right clients as personnel providing investment advice to those clients change.

I. Form N–1A

The proposed amendments to Form N–1A would require a description of any significant cybersecurity incident that has occurred in a fund's last two fiscal years. The proposed disclosure amendments would require that a fund disclose to investors in its registration statement whether a significant fund cybersecurity incident has or is currently affecting the fund or its service providers.

Form N–1A generally imposes two types of reporting burdens on investment companies: (1) The burden of preparing and filing the initial registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. In our most recent Paperwork Reduction Act submission for Form N–1A, we estimated for Form N–1A a total aggregate annual hour burden of 1,672,077 hours, and a total annual aggregate annual external cost burden of $132,940,008.[291] Compliance with the disclosure requirements of Form N–1A is mandatory, and the responses to the disclosure requirements will not be kept confidential. These collections of information would help increase the likelihood that funds are prepared to respond to a cybersecurity incident, and would provide Commission staff with information in its examination and oversight program in identifying patterns and trends across registrants regarding such incidents. Based on filing data as of December 30, 2020, we estimate that 13,248 funds would be subject to these proposed amendments.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–1A.

TABLE 8—FORM N–1A PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED FORM N–1A ESTIMATES					
Cybersecurity incident disclosures [3].	21	15 hours [4]	$356 (blended rate for compliance attorney and senior programmer).	$5,340	[5] $992
Number of funds		× 13,248 funds [6]		× 13,248 funds	[7] × 6,624
Total new aggregate annual burden.		198,720 hours		$70,744,320	$6,571,008
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates.		+ 1,672,077 hours			+ $132,940,008
Revised aggregate annual burden estimates.		1,870,797 hours			$139,511,016

Notes:

[1] Includes initial burden estimates annualized over a 3-year period.

[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

[3] This estimate represents the average burden for a filer. Filers that experience one or several fund cybersecurity incidents are expected to incur higher burdens.

[4] Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 15 hours is based on the following calculation: ((21 initial hours/3) + 8 additional ongoing burden hours) = 15 hours.

[5] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

[6] Includes all open-end funds, including ETFs, registered on Form N–1A.

[7] We estimate that 50% of funds will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

J. Form N–2

The proposed amendments to Form N–2 would require a description of any significant cybersecurity incident that has occurred in a fund's last two fiscal years. The proposed disclosure amendments would require that a fund disclose to investors in its registration statement whether a significant fund cybersecurity incident has or is currently affecting the fund, any subsidiary, or the fund's service providers.

Form N–2 generally imposes two types of reporting burdens on investment companies: (1) The burden of preparing and filing the initial

[291] On September 9, 2021, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Form N–1A.

registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. In our most recent Paperwork Reduction Act submission for Form N–2, we estimated for Form N–2 a total aggregate annual hour burden of 94,350 hours, and a total aggregate annual external cost burden of $6,269,752.[292] Compliance with the disclosure requirements of Form N–2 is mandatory, and the responses to the disclosure requirements will not be kept confidential. These collections of information would help increase the likelihood that funds are prepared to respond to a cybersecurity incident, and would provide Commission staff with information in its examination and oversight program in identifying patterns and trends across registrants regarding such incidents. Based on filing data as of December 30, 2020, we estimate that 786 funds, including BDCs, would be subject to these proposed amendments.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–2.

TABLE 9—FORM N–2 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED FORM N–2 ESTIMATES					
Cybersecurity incident disclosures [3].	21	15 hours [4]	$356 (blended rate for compliance attorney and senior programmer).	$5,340	$992 [5]
Number of funds		× 786 funds [6]		× 786 funds	× 393 [7]
Total new aggregate annual burden.		11,790 hours		$4,197,240	$389,856
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates.		+ 94,350 hours			+ $6,269,752
Revised aggregate annual burden estimates.		106,140 hours			$6,659,608

Notes:
[1] Includes initial burden estimates annualized over a 3-year period.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimate represents the average burden for a filer. Filers that experience one or several fund cybersecurity incidents are expected to incur higher burdens.
[4] Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 15 hours is based on the following calculation: ((21 initial hours/3) + 8 additional ongoing burden hours) = 15 hours.
[5] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
[6] Includes 691 registered closed-end funds and 95 BDCs.
[7] We estimate that 50% of funds will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

K. Form N–3

The proposed amendments to Form N–3 would require a description of any significant cybersecurity incident that has occurred in a fund's last two fiscal years. The proposed disclosure amendments would require that a fund disclose to investors in its registration statement whether a significant fund cybersecurity incident has or is currently affecting the fund, insurance company, or the fund's service providers.

Form N–3 generally imposes two types of reporting burdens on investment companies: (1) The burden of preparing and filing the initial registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. In our most recent Paperwork Reduction Act submission for Form N–3, we estimated for Form N–3 a total aggregate annual hour burden of 2,836 hours, and a total aggregate annual external cost burden of $123,114.[293] Compliance with the disclosure requirements of Form N–3 is mandatory, and the responses to the disclosure requirements will not be kept confidential. These collections of information would help increase the likelihood that funds are prepared to respond to a cybersecurity incident, and would provide Commission staff with information in its examination and oversight program in identifying patterns and trends across registrants regarding such incidents. Based on filing data as of December 30, 2020, we estimate that 14 funds would be subject to these proposed amendments.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–3.

[292] On September 17, 2020, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Form N–2.

[293] On August 13, 2020, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Form N–3.

TABLE 10—FORM N–3 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED FORM N–3 ESTIMATES					
Cybersecurity incident disclosures [3].	21	15 hours [4]	$356 (blended rate for compliance attorney and senior programmer).	$5,340	[5] $992
Number of funds		× 14 funds		× 14 funds	[6] × 7
Total new aggregate annual burden.		210 hours		$74,760	$6,944
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates.		+ 2,836 hours			+ $123,114
Revised aggregate annual burden estimates.		3,046 hours			$130,058

Notes:
[1] Includes initial burden estimates annualized over a 3-year period.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimate represents the average burden for a filer. Filers that experience one or several fund cybersecurity incidents are expected to incur higher burdens.
[4] Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 15 hours is based on the following calculation: ((21 initial hours/3) + 8 additional ongoing burden hours) = 15 hours.
[5] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
[6] We estimate that 50% of funds will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

L. Form N–4

The proposed amendments to Form N–4 would require a description of any significant cybersecurity incident that has occurred in a fund's last two fiscal years. The proposed disclosure amendments would require that a fund disclose to investors in its registration statement whether a significant fund cybersecurity incident has or is currently affecting the fund, depositor, or the fund's service providers.

Form N–4 generally imposes two types of reporting burdens on investment companies: (1) The burden of preparing and filing the initial registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. In our most recent Paperwork Reduction Act submission for Form N–4, we estimated for Form N–4 a total aggregate annual hour burden of 292,487 hours, and a total aggregate annual external cost burden of $33,348,866.[294] Compliance with the disclosure requirements of Form N–4 is mandatory, and the responses to the disclosure requirements will not be kept confidential. These collections of information would help increase the likelihood that funds are prepared to respond to a cybersecurity incident, and would provide Commission staff with information in its examination and oversight program in identifying patterns and trends across registrants regarding such incidents. Based on filing data as of December 30, 2020, we estimate that 418 funds would be subject to these proposed amendments.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–4.

TABLE 11—FORM N–4 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED FORM N–4 ESTIMATES					
Cybersecurity incident disclosures [3].	21	15 hours [4]	$356 (blended rate for compliance attorney and senior programmer).	$5,340	[5] $992
Number of funds		× 418 funds		× 418 funds	[6] × 209
Total new aggregate annual burden.		6,270 hours		$2,232,120	$207,328

[294] On October 26, 2021, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Form N–4.

TABLE 11—FORM N–4 PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates.	.....	+ 292,487 hours ...	.....	.....	+ $33,348,866
Revised aggregate annual burden estimates.	.....	198,757 hours	.....	.....	$33,556,194

Notes:
[1] Includes initial burden estimates annualized over a 3-year period.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimate represents the average burden for a filer. Filers that experience one or several fund cybersecurity incidents are expected to incur higher burdens.
[4] Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 15 hours is based on the following calculation: ((21 initial hours/3) + 8 additional ongoing burden hours) = 15 hours.
[5] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
[6] We estimate that 50% of funds will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

M. Form N–6

The proposed amendments to Form N–6 would require a description of any significant cybersecurity incident that has occurred in a fund's last two fiscal years. The proposed disclosure amendments would require that a fund disclose to investors in its registration statement whether a significant fund cybersecurity incident has or is currently affecting the fund, depositor, or the fund's service providers.

Form N–6 generally imposes two types of reporting burdens on investment companies: (1) The burden of preparing and filing the initial registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. In our most recent Paperwork Reduction Act submission for Form N–6, we estimated for Form N–6 a total aggregate annual hour burden of 31,987 hours, and a total aggregate annual external cost burden of $3,816,692.[295] Compliance with the disclosure requirements of Form N–6 is mandatory, and the responses to the disclosure requirements will not be kept confidential. These collections of information would help increase the likelihood that funds are prepared to respond to a cybersecurity incident, and would provide Commission staff with information in its examination and oversight program in identifying patterns and trends across registrants regarding such incidents. Based on filing data as of December 30, 2020, we estimate that 236 funds would be subject to these proposed amendments.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–6.

TABLE 12—FORM N–6 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED FORM N–6 ESTIMATES					
Cybersecurity incident disclosures [3].	21	15 hours [4]	$356 (blended rate for compliance attorney and senior programmer).	$5,340	[5] $992
Number of funds	.....	× 236 funds	.....	× 236 funds	[6] × 118
Total new aggregate annual burden.	.....	3,540 hours	.....	$1,260,240	$117,056
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates.	.....	+ 31,987 hours	.....	.....	+ $3,816,692
Revised aggregate annual burden estimates.	.....	35,527 hours	.....	.....	$3,933,748

Notes:
[1] Includes initial burden estimates annualized over a 3-year period.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimate represents the average burden for a filer. Filers that experience one or several fund cybersecurity incidents are expected to incur higher burdens.

[295] On October 26, 2021, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Form N–6.

[4] Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 15 hours is based on the following calculation: ((21 initial hours/3) + 8 additional ongoing burden hours) = 15 hours.
[5] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
[6] We estimate that 50% of funds will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

N. Form N–8B–2 and Form S–6

The proposed amendments to Form N–8B–2 would require a description of any significant cybersecurity incident that has occurred in a fund's last two fiscal years. The proposed disclosure amendments would require that a fund disclose to investors in its registration statement whether a significant fund cybersecurity incident has or is currently affecting the fund, depositor, or the fund's service providers. Form N–8B–2 is used by UITs to initially register under the Investment Company Act pursuant to section 8 thereof.[296] UITs are required to file Form S–6 in order to register offerings of securities with the Commission under the Securities Act.[297] As a result, UITs file Form N–8B–2 only once when the UIT is initially created and then use Form S–6 to file all post-effective amendments to their registration statements in order to update their prospectuses.[298]

In our most recent Paperwork Reduction Act submission for Form N–8B–2, we estimated for Form N–8B–2 a total aggregate annual hour burden of 28 hours, and total aggregate annual external cost burden of $10,300.[299] We currently estimate for Form S–6 a total aggregate annual hour burden of 107,359 hours, and an aggregate annual external cost burden estimate of $68,108,956.[300] Compliance with the disclosure requirements of Form N–8B–2 and Form S–6 is mandatory, and the responses to the disclosure requirements will not be kept confidential. These collections of information would help increase the likelihood that funds are prepared to respond to a cybersecurity incident, and would provide Commission staff with information in its examination and oversight program in identifying patterns and trends across registrants regarding such incidents. Based on filing data as of December 30, 2020, we estimate that one filing would be subject to the proposed amendments under Form N–8B–2 and 1,047 filings would be subject to the proposed amendments under Form S–6.[301]

The table below summarizes our PRA annual burden estimates associated with the proposed amendments to Form N–8B–2 and Form S–6.

TABLE 13—FORM N–8B–2 PRA ESTIMATES

	Internal annual burden hour [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED FORM N–8B–2 ESTIMATES				
Cybersecurity incident disclosures [3]	1 hour	$356 (blended rate for compliance attorney and senior programmer).	$356	[4] $992
Number of filings	× 1 filing		× 1 filing	[5] × 0.5
Total new aggregate annual burden	1 hour		$356	$496
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current aggregate annual burden estimates	+ 28 hours			+ $10,300
Revised aggregate annual burden estimates	29 hours			$10,796

Notes:
[1] Includes initial burden estimates annualized over a 3-year period.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimate represents the average burden for a filer. Filers that experience one or several fund cybersecurity incidents are expected to incur higher burdens.
[4] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
[5] We estimate that 50% of funds will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

[296] *See* Form N–8B–2 [17 CFR 274.12].
[297] *See* Form S–6 [17 CFR 239.16]. Form S–6 is used for registration under the Securities Act of securities of any UIT registered under the Securities Act on Form N–8B–2.
[298] Form S–6 incorporates by reference the disclosure requirements of Form N–8B–2 and allows UITs to meet the filing and disclosure requirements of the Securities Act.
[299] On January 21, 2021, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Form N–8B–2.
[300] On July 30, 2020, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Form S–6.
[301] The number of unit investment trusts that report being registered under the Investment Company Act on Form N–8B–2 is 47; however, we believe using the number of filings instead of registrants would form a more accurate estimate of annual burdens. This estimate is based on the average number of filings made on Form N–8B–2 and Form S–6 from 2018 to 2020.

TABLE 14—FORM S–6 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED FORM S–6 ESTIMATES					
Cybersecurity incident disclosures [3].	21	15 hours [4]	$356 (blended rate for compliance attorney and senior programmer).	$5,340	[5] $992
Number of filings	.....	× 1,047 filings	.....	× 1,047 filings	× 524 [6]
Total new aggregate annual burden.	.....	15,705 hours	.....	$5,590,980	$519,312
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates.	.....	+ 107,359 hours ...	.....	.....	+ $68,108,956
Revised aggregate annual burden estimates.	.....	123,064 hours	.....	.....	$68,628,268

Notes:
[1] Includes initial burden estimates annualized over a 3-year period.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimate represents the average burden for a filer. Filers that experience one or several fund cybersecurity incidents are expected to incur higher burdens.
[4] Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 15 hours is based on the following calculation: ((21 initial hours/3) + 8 additional ongoing burden hours) = 15 hours.
[5] This estimated burden is based on the estimated wage rate of $496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
[6] We estimate that 50% of filers will use outside legal services for these collections of information. This estimate takes into account that funds may elect to use outside legal services (along with in-house counsel), based on factors such as fund budget and the fund's standard practices for using outside legal services, as well as personnel availability and expertise.

O. Investment Company Interactive Data

We are proposing to amend Form N–1A, Form N–2, Form N–3, Form N–4, Form N–6, Form N–8B–2, and Form S–6; rule 485 and rule 497 under the Securities Act; and rule 11 and rule 405 of Regulation S–T to require certain new structured data reporting requirements for funds.[302] Specifically, the proposed amendments would include new structured data requirements that would require funds to tag the information that the proposal would require funds to include in their registration statements about significant fund cybersecurity incidents using Inline XBRL.[303] The purpose of these information collections is to make information of significant fund cybersecurity incidents easier for investors to analyze and to help automate regulatory filings and business information processing, and to improve consistency between all types of funds with respect to the accessibility of cybersecurity information they provide to the market.

Funds filing registration statements on Form N–1A, Form N–2, Form N–3, Form N–4, and Form N–6 already submit certain information using Inline XBRL. Based on filing data as of December 30, 2020, we estimate that 14,702 funds filing registration statements on these forms would be subject to the proposed interactive data amendments. UITs filing initial registration statements on Form N–8B–2 and post-effective amendments on Form S–6 are not currently subject to requirements to submit information in structured form. Because these UITs have not previously been subject to Inline XBRL requirements, we assume that these funds would experience additional burdens related to one-time costs associated with becoming familiarized with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants, and the training of staff. Based on filing data as of December 30, 2020, we estimate that 1,048 filings would be subject to these proposed amendments. In our most recent Paperwork Reduction Act submission for Investment Company Interactive Data, we estimated a total aggregate annual hour burden of 252,602 hours, and a total aggregate annual external cost burden of $15,350,750.[304] Compliance with the interactive data requirements is mandatory, and the responses will not be kept confidential.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N–1A, Form N–2, Form N–3, Form N–4, Form N–6, Form N–8B–2, and Form S–6, as well as Regulation S–T.

[302] The Investment Company Interactive Data collection of information do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information.

[303] *See supra* section II.C.4; *see also* proposed rule 405(b)(2)–(3) of Regulation of S–T; proposed rule 485(c)(3); proposed rule 497(c) and 497(e); proposed General Instruction C.3.(g)(i) and (ii) of Form N–1A; proposed General Instruction I.2 and 3 of Form N–2; proposed General Instruction C.3(h)(i) and (ii) of Form N–3; proposed General Instruction C.3(h)(i) and (ii) of Form N–4; proposed General Instruction C.3(h)(i) and (ii) of Form N–6; proposed General Instruction 2.(*l*) of Form N–8B–2; and proposed General Instruction 5 of Form S–6.

[304] On November 9, 2020, the Office of Management and Budget approved without change a revision of the currently approved information collection estimate for Registered Investment Company Interactive Data.

TABLE 15—INVESTMENT COMPANY INTERACTIVE DATA PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden
PROPOSED INTERACTIVE DATA ESTIMATES					
Cybersecurity incident information for current XBRL filers [3].	1	1 hour [4]	$356 (blended rate for compliance attorney and senior programmer).	$356	$50 [5]
Number of funds		× 14,702 funds [6]		× 14,702 funds	× 14,702 funds
Cybersecurity incident information for new XBRL filers [7].	9	4 hours [8]	$356 (blended rate for compliance attorney and senior programmer).	$1,424	$900 [9]
Number of filings		× 1,048 filings [10]		× 1,048 filings	× 1,048 filings
Total new aggregate annual burden.		18,894 hours [11]		$6,726,264 [12]	$1,678,300 [13]
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates.		+ 252,602 hours			+ $15,350,750
Revised aggregate annual burden estimates.		271,496 hours			$17,029,050

Notes:

[1] Includes initial burden estimates annualized over a 3-year period.

[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

[3] This estimate represents the average burden for a filer on Form N–1A, Form N–2, Form N–3, Form N–4, and Form N–6 that is currently subject to interactive data requirements.

[4] Includes initial burden estimates annualized over a three-year period, plus 0.67 ongoing annual burden hours. The estimate of 1 hour is based on the following calculation: ((1 initial hour/3) + 0.67 additional ongoing burden hours) = 1 hour.

[5] We estimate an incremental external cost for filers on Form N–1A, Form N–2, Form N–3, Form N–4, and Form N–6 as they already submit certain information using Inline XBRL.

[6] Based on filing data as of December 30, 2020, we estimate 13,248 funds filing on Form N–1A; 786 funds, including BDCs, filing on Form N–2; 14 funds filing on Form N–3; 418 funds filing on Form N–4; and 236 funds on Form N–6, totaling 14,702 funds.

[7] This estimate represents the average burden for a filer on Form N–8B–2 and Form S–6 that is not currently subject to interactive data requirements.

[8] Includes initial burden estimates annualized over a three-year period, plus 1 ongoing annual burden hour. The estimate of 4 hours is based on the following calculation: ((9 initial hours/3) + 1 additional ongoing burden hour) = 4 hours.

[9] We estimate an external cost for filers on Form N–8B–2 and Form S–6 of $900 to reflect one-time compliance and initial set-up costs. Because these filers have not been previously been subject to Inline XBRL requirements, we estimate that these funds would experience additional burdens related to one time-costs associated with becoming familiar with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants, or the training of staff.

[10] The number of unit investment trusts that report being registered under the Investment Company Act on Form N–8B–2 is 47; however, we believe using the number of filings instead of registrants would form a more accurate estimate of annual burdens. This estimate is therefore based on the average number of filings made on Form N–8B–2 and Form S–6 from 2018 to 2020.

[11] 18,894 hours = (14,702 funds × 1 hour) + (1,048 filings x 4 hours).

[12] $6,726,264 internal time cost = (14,702 funds × $356) + (1,048 filings × $1,424).

[13] $1,678,300 annual external cost = (14,702 funds × $50) + (1,048 filings × $900).

P. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–04–22. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–04–22, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Act Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[305] It relates to: (1) Proposed rule 206(4)–9 under the Advisers Act; (2) proposed rule 38a-2 under the Investment Company Act; (3) proposed rule 204–6 under the Advisers

[305] 5 U.S.C. 603(a).

Act; (4) proposed amendments to rule 204–3 under the Investment Advisers Act; (5) proposed amendments to rule 204–2 under the Advisers Act; (6) proposed Form ADV–C; (7) proposed amendments to Form ADV Part 2A; and (8) proposed amendments to Form N–1A, Form N–2, Form N–3, Form N–4, Form N–6, Form N–8B–2, and Form S–6 (''fund registration forms'') as well as proposed conforming amendments to rule 485 and rule 497 under the Securities Act and rule 11 and rule 405 of Regulation S–T.

A. Reason for and Objectives of the Proposed Action

The reasons for, and objectives of, the proposed rules are discussed in more detail in sections I and II, above. The burdens of these requirements on small advisers and funds are discussed below as well as above in sections III and IV, which discuss the burdens on all advisers and funds. Sections II through IV also discuss the professional skills that we believe compliance with the proposed rules form amendments would require.

We are proposing rule 206(4)–9 under the Advisers Act and rule 38a–2 under the Investment Company Act to require all advisers and funds registered with the Commission to adopt and implement cybersecurity policies and procedures. Advisers and funds are increasingly relying on technology systems and networks and face increasing cybersecurity risks. These proposed rules would therefore require all advisers and funds to consider and mitigate cybersecurity risk to enhance investor protection.[306]

We are also proposing rules and amendments, discussed below, regarding recordkeeping, reporting, and disclosure.[307] We are proposing amendments to recordkeeping requirements under rule 204–2 to: (1) Conform the books and records rule to the proposed cybersecurity risk management rules; (2) help ensure that an investment adviser retains records of all of its documents related to its cybersecurity risk management; and (3) facilitate the Commission's inspection and enforcement capabilities.

We are proposing a new reporting requirement for advisers under proposed rule 204–6 using proposed Form ADV–C. We believe this requirement to provide prompt notice of significant cybersecurity incidents would help the Commission and its staff in its efforts to protect investors in connection with cybersecurity incidents by describing the nature and extent of a particular cybersecurity incident and the firm's response to the incident. The structured format of Form ADV–C would enhance the staff's ability to carry out our risk-based examination program and other risk assessment and monitoring activities effectively, including assessing trends in cybersecurity incidents across the industry.

Finally, we are proposing disclosure amendments for advisers and funds as well as related amendments to the brochure delivery rule, rule 204–3, for advisers. These proposed amendments are designed to enhance investor protection by ensuring cybersecurity risk or incident-related information is available to increase understanding and insight into an adviser's or fund's cybersecurity history and risks. For example, given the potential effect that significant cybersecurity incidents could have on an adviser's clients, we believe that requiring an adviser to deliver the brochure amendment under the proposed amendments to rule 204–3 promptly would enhance investor protection by enabling clients to take protective or remedial measures to the extent appropriate.

We believe that the proposed amendments discussed above would, together, improve the ability of clients and prospective clients to evaluate and understand relevant cybersecurity risks and incidents that advisers, funds and their personnel face and their potential effect on the advisers' and fund's services and operations.

1. Proposed Rule 206(4)–9

Proposed rule 206(4)–9 would require policies and procedures that address: (1) Risk assessment; (2) user security and access; (3) information protection; (4) threat and vulnerability management; and (5) cybersecurity incident response and recovery. The proposed rule would also require an annual review of these cybersecurity policies and procedures, in which an adviser: (1) Reviews and assesses the design and effectiveness of the cybersecurity policies and procedures; and (2) prepares a written report that, at a minimum, describes the review, assessment, and any control tests performed, explains their results, documents any cybersecurity incident that occurred since the date of the last report, and discusses any material changes to the policies and procedures since the date of the last report. Proposed rule 206(4)–9 would allow firms to tailor their cybersecurity policies and procedures to fit the nature and scope of their business and address their individual cybersecurity risks.

2. Proposed Rule 38a–2

The policies and procedures proposed under rule 38a–2 under the Investment Company Act would address: (1) Risk assessment; (2) user security and access; (3) information protection; (4) threat and vulnerability management; and (5) cybersecurity incident response and recovery. The fund's cybersecurity policies and procedures would be reviewed and assessed at least annually. In addition, proposed rule 38a–2 would require that a fund maintain a copy of its cybersecurity policies and procedures that are in effect, or at any time in the last five years were in effect, in an easily accessible place. The fund would also have to maintain copies for at least five years, the first two years in an easily accessible place, of: (1) Copies of written reports provided to its board; (2) records documenting the fund's cybersecurity review; (3) any report of a significant fund cybersecurity incident provided to the Commission by its adviser that the proposed rule would require; (4) records documenting the occurrence of any cybersecurity incident, including records related to any response and recovery from such an incident; and (5) records documenting a fund's cybersecurity risk assessment.

3. Proposed Amendments to Rule 204–2

We are proposing related amendments to rule 204–2, the books and records rule, under the Advisers Act, which sets forth requirements for maintaining, making, and retaining advertisements. We are proposing to amend the current rule to require advisers to retain (1) a copy of their cybersecurity policies and procedures formulated pursuant to proposed rule 206(4)–9 that are in effect, or at any time within the past five years were in effect; (2) a copy of the adviser's written report documenting the annual review of its cybersecurity policies and procedures pursuant to proposed rule 206(4)–9; (3) a copy of any Form ADV–C filed by the adviser under rule 204–6 in the last five years; (4) records documenting the occurrence of any cybersecurity incident, as defined in rule 206(4)–9(c), occurring in the last five years, including records related to any response and recovery from such an incident; and (5) records documenting any risk assessment conducted pursuant to the cybersecurity policies and

[306] *See* proposed rule 206(4)–9 and proposed rule 38a–2; *supra* section II.A (discussing the cybersecurity policies and procedures requirements).

[307] *See* proposed rule 204–2 (recordkeeping); proposed rule 204–6, and amendments to rule 204–3 and Form ADV (reporting); and amendments to Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6 (disclosure).

procedures required by rule 206(4)–9(a)(1) in the last five years.[308]

4. Proposed Rule 204–6

We are proposing a new reporting requirement under proposed rule 204–6. Under the proposed rule, any adviser registered or required to be registered with the Commission as an investment adviser would be required to submit proposed Form ADV–C promptly, but in no event more than 48 hours, after having a reasonable basis to conclude that a significant adviser cybersecurity incident or a significant fund cybersecurity incident had occurred or is occurring.[309] The proposed rule would also require advisers to amend any previously filed Form ADV–C promptly, but in no event more than 48 hours after, information reported on the form becomes materially inaccurate; if new material information about a previously reported incident is discovered; and after resolving a previously reported incident or closing an internal investigation pertaining to a previously disclosed incident.[310]

5. Form ADV–C

As discussed above, we are proposing a new reporting requirement under proposed rule 204–6 using proposed Form ADV–C. This new Form ADV–C would require an adviser to provide information regarding a significant cybersecurity incident in a structured format through a series of check-the-box and fill-in-the-blank questions. Proposed Form ADV–C would require advisers to report certain information regarding a significant cybersecurity incident in order to allow the Commission and its staff to understand the nature and extent of the cybersecurity incident and the adviser's response to the incident.

6. Proposed Amendments to Form ADV Part 2A

We are proposing amendments to Form ADV that are designed to provide clients and prospective clients with information regarding cybersecurity risks and incidents that could materially affect the advisory relationship. The proposed amendments would add a new Item 20 entitled ''Cybersecurity Risks and Incidents'' to Form ADV's narrative brochure, or Part 2A. The brochure, which is publicly available and the primary client-facing disclosure document, contains information about the investment adviser's business practices, fees, risks, conflicts of interest, and disciplinary information. Advisers would be required to, in plain English, describe cybersecurity risks that could materially affect the advisory services they offer and describe how they assess, prioritize, and address cybersecurity risks created by the nature and scope of their business.

The proposed amendments would also require advisers to describe any cybersecurity incidents that have occurred within the last two years that have significantly disrupted or degraded the adviser's ability to maintain critical operations, or has led to the unauthorized access or use of adviser information, resulting in substantial harm to the adviser or its clients. The description of each incident, to the extent known, must include the following information: The entity or entities affected, when the incident was discovered and whether it is ongoing, whether any data was stolen, altered, or accessed or used for any other unauthorized purpose, the effect of the incident on the adviser's operations, and whether the adviser or a service provider has remediated or is currently remediating the incident.

7. Proposed Amendments to Rule 204–3

Currently, rule 204–3(b) does not require advisers to deliver interim brochure amendments to existing clients unless the amendment includes certain disciplinary information in response to Item 9 Part 2A. We are proposing amendments to rule 204–3 that would require an adviser to deliver interim brochure amendments to existing clients promptly if the adviser adds disclosure of a cybersecurity incident to its brochure or materially revises information already disclosed in its brochure about such an incident.[311]

8. Proposed Amendments to Fund Registration Forms, Rules Under the Securities Act, and Regulation S–T

The Commission also is proposing disclosure requirements on funds' registration statements to enhance investor protection by requiring that cybersecurity incident-related information is available to increase understanding in these areas and help ensure that investors and clients are making informed investment decisions. Our proposal would require a fund to provide prospective and current investors with disclosure about significant fund cybersecurity incidents on Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6. Our proposal, including the proposed amendments to the fund registration forms and conforming amendments to rule 485 and rule 497 under the Securities Act, and rule 11 and rule 405 of Regulation S–T, would also require a fund to tag information about significant fund cybersecurity incidents using Inline XBRL.

B. Legal Basis

The Commission is proposing rule 206(4)–9, rule 204–6, and Form ADV–C under the Advisers Act under the authority set forth in sections 203(d), 206(4), and 211(a) of the Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a)]. The Commission is proposing amendments to rule 204–3 under the Advisers Act under the authority set forth in sections 203(d), 206(4), 211(a) and 211(h) of the Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a) and (h)]. The Commission is proposing amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11]. The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Exchange Act [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)]. The Commission is proposing rule 38a–2 under the authority set forth in sections 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–30(a) and 80a–37(a)]. The Commission is proposing amendments to Form N–1A, Form N–2, Form N–3, Form N–4, Form N–6, Form N–8B–2, and Form S–6 under the authority set forth in sections 8, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–29, and 80a–37] and sections 6, 7(a), 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77g(a), 77j, 77s(a)]. The Commission is proposing amendments to rule 232.11 and 232.405 under the authority set forth in section 23 of the Exchange Act [15 U.S.C. 78w]. The Commission is proposing amendments to rule 230.485 and rule 230.497 under the authority set forth in sections 10 and 19 of the Securities Act [15 U.S.C. 77j and 77s].

C. Small Entities Subject to the Rules and Rule Amendments

In developing these proposals, we have considered their potential effect on

[308] *See* proposed rule 204–2(a)(17)(i), (iv) through (vii).

[309] *See* proposed rule 204–6.

[310] *See id.*

[311] *See* proposed rule 204–3(b)(4).

small entities that would be subject to the proposed rules and amendments. The proposed rules and amendments would affect many, but not all, investment advisers registered with the Commission, including some small entities.

1. Small Entities Subject to Proposed Rule 206(4)–9, Proposed Rule 204–6, Proposed Form ADV–C and Proposed Amendments to Rule 204–2, Rule 204–3, and Form ADV Part 2A

Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[312] Our proposed rules and amendments would not affect most investment advisers that are small entities (''small advisers'') because they are generally registered with one or more state securities authorities and not with the Commission. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of October 31, 2021, approximately 579 SEC-registered advisers are small entities under the RFA.[313]

As discussed above in section III.C (the Economic Analysis), the Commission estimates that based on IARD data as of October 31, 2021, approximately 14,774 investment advisers would be subject to proposed rule 206(4)–9 and the related proposed amendments to rule 204–2 under the Advisers Act.

All of the approximately 579 SEC-registered advisers that are small entities under the RFA would be subject to proposed rule 206(4)–9, proposed rule 204–6, and proposed Form ADV–C as well as the proposed amendments to rule 204–2, rule 204–3 and Form ADV Part 2A.

2. Small Entities Subject to Proposed Rule 38a–2 and Proposed Amendments to Fund Registration Forms

For purposes of Commission rulemaking in connection with the Regulatory Flexibility Act, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year (a ''small fund'').[314] All of the approximately 27 registered open-end mutual funds, 6 registered ETFs, 23 registered closed-end funds, 5 UITs, and 9 BDCs (collectively, 70 funds) that are small entities under the RFA would be subject to proposed rule 38a–2 and the proposed amendments to fund registration forms, including the structured data requirements.[315]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

1. Proposed Rule 206(4)–9

Proposed rule 206(4)–9 would impose certain reporting and compliance requirements on investment advisers, including those that are small entities. All registered investment advisers, including small entity advisers, would be required to comply with the proposed rule's policies and procedures and annual review requirement. The proposed requirements, including compliance and recordkeeping requirements, are summarized in this IRFA (section V.A. above). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections II through IV.

There are different factors that would affect whether a smaller adviser incurs costs relating to these requirements that are higher or lower than the estimates discussed in section IV.B. For example, we would expect that smaller advisers may not already have cybersecurity programs that would meet all of the elements that would be required under the proposed amendments. Also, while we would expect larger advisers to incur higher costs related to this proposed rule in absolute terms relative to a smaller adviser, we would expect a smaller adviser to find it more costly, per dollar managed, to comply with the proposed requirements because it would not be able to benefit from a larger adviser's economies of scale.

As discussed above, there are approximately 579 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us would be subject to the proposed rule 206(4)–9. As discussed above in our Paperwork Reduction Act Analysis in section IV, the proposed rule 206(4)–9 under the Advisers Act, which would require advisers to prepare policies and procedures related to cybersecurity risks and incidents, as well as annual review of those policies and procedures, which would create a new annual burden of approximately 31.67 hours per adviser, or 18,336.93 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $7,262,139.36.[316]

2. Proposed Rule 38a–2

The proposed amendments contain compliance requirements regarding policies and procedures, reporting, recordkeeping, and other requirements to manage cybersecurity risks and incidents. All registered investment companies and BDCs, including small entities, would be required to comply with the proposed rule's requirements. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. The proposed requirements, including compliance and recordkeeping requirements, are summarized in this IRFA (section V.A. above). All of these proposed requirements are also discussed in detail in sections I and II above, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet

[312] Advisers Act rule 0–7(a) [17 CFR 275.0–7].

[313] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV.

[314] *See* rule 0–10(a) under the Investment Company Act [17 CFR 270.0–10(a)].

[315] This estimate is derived an analysis of data obtained from Morningstar Direct as well as data reported to the Commission for the period ending June 2021. We expect few, if any, separate accounts would be treated as small entities because state law generally treats separate account assets as the property of the sponsoring insurance company. Rule 0–10(b) under the Investment Company Act aggregates each separate account's assets with the assets of the sponsoring insurance company, together with assets held in other sponsored separate accounts.

[316] $185,303,708 total cost × (579 small advisers/14,774 advisers) = $7,262,139.36.

these specific burdens are also discussed in sections II through IV.

There are different factors that would affect whether a smaller fund incurs costs relating to these requirements that are higher or lower than the estimates discussed in section IV.C. For example, we would expect that smaller funds—and more specifically, smaller funds that are not part of a fund complex—may not have cybersecurity programs that would meet all the elements that would be required under the proposed amendments. Also, while we would expect larger funds or funds that are part of a large fund complex to incur higher costs related to this requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex's economies of scale. Notwithstanding the economies of scale experienced by large versus small funds, we would not expect the costs of compliance associated with the new requirements to be meaningfully different for small versus large funds.

As discussed above, there are approximately 70 funds that are small entities currently registered with us, and we estimate that 100 percent of funds registered with us would be subject to the proposed rule 38a–2. As discussed above in our Paperwork Reduction Act Analysis in section IV, the proposed rule 38a–2 under the Investment Company Act, which would require funds to prepare policies and procedures related to cybersecurity risks and incidents, as well as annual review of those policies and procedures, would create a new annual burden of approximately 32 hours per fund, or 2,240 hours in aggregate for funds that are small entities. We therefore expect the annual monetized aggregate cost to small funds associated with our proposed amendments would be $947,170.[317]

3. Proposed Amendments to Rule 204–2

The proposed amendments to rule 204–2 would impose certain recordkeeping requirements on investment advisers, including those that are small entities. All registered investment advisers, including small entity advisers, would be required to comply with the recordkeeping amendments, which are summarized in this IRFA (section V.C. above). The proposed amendments are also discussed in detail, above, in sections I and II, and the requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections II through IV.

As discussed above, there are approximately 579 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us would be subject to the proposed amendments to rule 204–2. As discussed above in our Paperwork Reduction Act Analysis in section IV, the proposed amendments to rule 204–2 under the Advisers Act, which would require advisers to retain certain copies of documents required under proposed rule 206(4)–9 and proposed rule 204–6, would create a new annual burden of approximately 5 hours per adviser, or 2,895 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $196,860.[318]

4. Proposed Rule 204–6

Proposed rule 204–6 would impose certain reporting and compliance requirements on investment advisers, including those that are small entities. Specifically, proposed rule 204–6 would require advisers to report significant cybersecurity incidents with the Commission by filing proposed Form ADV–C. All registered investment advisers, including small entity advisers, would be required to comply with the proposed rule's reporting requirement by filing proposed Form ADV–C. The proposed requirements, including reporting and compliance requirements, are summarized in this IRFA (section V.C. above). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections II through IV.

As discussed above, there are approximately 579 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us would be subject to proposed rule 204–6. As discussed above in our Paperwork Reduction Act Analysis in section IV, proposed rule 204–6 under the Advisers Act, which would require advisers to report to the Commission any significant adviser cybersecurity incident or significant fund cybersecurity incident, would create a new annual burden of approximately 4 hours per adviser, or 2,316 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $343,926.[319]

5. Form ADV–C

Proposed Form ADV–C would impose certain reporting and compliance requirements on investment advisers, including those that are small entities. All registered investment advisers, including small entity advisers, would be required to comply with the proposed Form ADV–C's requirements. The proposed requirements, including reporting and compliance requirements, are summarized in this IRFA (section V.C. above). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections II through IV.

As discussed above, there are approximately 579 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us would be subject to proposed Form ADV–C. As discussed above in our Paperwork Reduction Act Analysis in section IV, proposed Form ADV–C, which advisers would file to report any significant cybersecurity incidents, would create a new annual burden of approximately 1.5 hours per adviser, or 868.5 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $343,926.[320]

[317] 70 small funds × $13,531 internal time cost per fund = $947,170.

[318] $5,023,160 total cost × (579 small advisers/14,774 advisers) = $196,860.

[319] $8,775,756 total cost × (579 small advisers/14,774 advisers) = $343,926.

[320] $8,775,756 total cost × (579 small advisers/14,774 advisers) = $343,926.

6. Proposed Amendments to Form ADV Part 2A

The proposed amendments to Form ADV would impose certain reporting and compliance requirements on investment advisers, including those that are small entities. All registered investment advisers, including small entity advisers, would be required to comply with the proposed amendments to Form ADV Part 2A. The proposed requirements are summarized in this IRFA (section V.C. above). They are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections II through IV.

As discussed above, there are approximately 579 advisers currently registered with us, and we estimate that 100 percent of advisers registered with us would be subject to the proposed amendments to Form ADV Part 2A. As discussed above in our Paperwork Reduction Act Analysis in section IV, the proposed amendments, which would require advisers to disclose any cybersecurity risks and incidents in their brochure, would create a new annual burden of approximately 16.28 hours per adviser, or 9,426.12 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $3,185,694.08.[321]

7. Proposed Amendments to Rule 204–3

The proposed amendments to rule 204–3 would impose certain reporting and compliance requirements on investment advisers, including those that are small entities. All registered investment advisers, including small entity advisers, would be required to comply with the proposed amendments to rule 204–3. The proposed amendments are summarized in this IRFA (section V.C. above). They are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections II through IV.

As discussed above, there are approximately 579 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us would be subject to the proposed amendments to rule 204–3. As discussed above in our Paperwork Reduction Act Analysis in section IV, the proposed amendments, which would require advisers to deliver an amended brochure if the amendment adds disclosure of an event, or materially revises information already disclosed about an event that involves a cybersecurity incident, would create a new annual burden of approximately 0.1 hours per adviser, or 57.9 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $3,705.60.[322]

8. Proposed Amendments to Fund Registration Forms, Rule 485 and Rule 497 Under the Securities Act, and Rule 11 and Rule 405 of Regulation S–T

The Commission also is proposing enhanced disclosure requirements on registration statements to enhance investor protection by requiring that cybersecurity incident-related information is available to increase understanding in these areas and help ensure that investors and clients can make informed investment decisions. Our proposal would require funds to provide prospective and current investors with disclosure about significant fund cybersecurity incidents on Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6, as applicable. Our proposal would also require a fund to tag information about significant fund cybersecurity incidents using Inline XBRL.

These requirements will impose burdens on all funds, including those that are small entities. The proposed requirements, including compliance and recordkeeping requirements, are summarized in this IRFA (section V.A. above). All of these proposed requirements are also discussed in detail in sections I and II above, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections II through IV.

As discussed above, there are approximately 27 registered open-end mutual funds, 6 registered ETFs, 23 registered closed-end funds, 5 UITs, and 9 BDCs (collectively, 70 funds) that are small entities under the RFA that would be subject to the proposed amendments to fund registration forms.[323] As discussed above in our Paperwork Reduction Act Analysis in section IV, the proposed amendments to disclosure forms, which would require funds to provide disclosure about significant cybersecurity incidents, would create a new annual burden. We therefore expect the annual monetized aggregate cost to small funds associated with our proposed amendments would be $404,060.[324]

There are different factors that would affect whether a smaller fund incurs costs related to this requirement that are on the higher or lower end of the estimated range. For example, while we would expect larger funds or funds that are part of a large fund complex to incur higher costs related to this requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex's economies of scale. For example, a large firm may have a business unit that manages cybersecurity for the whole firm, often led by a Chief Information Security Officer. The costs of that consolidated function, while substantial, would be spread across the whole firm, leading to economies of scale.

Notwithstanding the economies of scale experienced by large versus small funds, we would not expect the costs of compliance associated with the new disclosure requirements to be meaningfully different for small versus large funds. The costs of compliance would likely vary based on the significant fund cybersecurity incident. For example, a fund, no matter the size,

[321] $81,287,468.54 total cost × (579 small advisers/14,774 advisers) = $3,185,694.08.

[322] $94,553.6 total cost × (579 small advisers/14,774 advisers) = $3,705.60.

[323] This estimate is derived an analysis of data obtained from Morningstar Direct as well as data reported to the Commission for the period ending June 2021. We expect few, if any, separate accounts would be treated as small entities because state law generally treats separate account assets as the property of the sponsoring insurance company. Rule 0–10(b) under the Investment Company Act aggregates each separate account's assets with the assets of the sponsoring insurance company, together with assets held in other sponsored separate accounts.

[324] $404,060 = (70 funds × $5,340 disclosure form internal time cost) + (65 current XBRL filers × $356 interactive data internal time cost) + (5 new XBRL filers × $1,424 interactive data internal time cost).

would experience more burden if it experienced multiple significant fund cybersecurity incidents.

We are proposing to require all funds, including small entities, to tag the disclosure about significant fund cybersecurity incidents in Inline XBRL in accordance with rule 405 of Regulation S–T and the EDGAR Filer Manual. Large and small funds would both incur the costs associated with the proposed structured data requirements on a proportional basis. Furthermore, as noted above, based on our experience implementing tagging requirements that use the XBRL, we recognize that some funds that would be affected by the proposed requirement, particularly filers with no Inline XBRL tagging experience, likely would incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL. The incremental effect of any fixed costs, including ongoing fixed costs, of complying with the proposed Inline XBRL requirement may be greater for smaller filers. However, we believe that smaller funds in particular may benefit more from any enhanced exposure to investors that could result from these proposed requirements. If reporting the disclosures in a structured data language increases the availability of, or reduces the cost of collecting and analyzing, key information about funds, smaller funds may benefit from improved coverage by third-party information providers and data aggregators.

E. Duplicative, Overlapping, or Conflicting Federal Rules

1. Proposed Rule 206(4)–9

Investment advisers do not have obligations under the Advisers Act specifically for policies and procedures related to cybersecurity risks and incidents. However, their fiduciary duties require them to take steps to protect client interests, which would include steps to minimize operational and other risks that could lead to significant business disruptions or a loss or misuse of client information. Since cybersecurity incidents can lead to significant business disruptions and loss or misuse of client information, advisers should already be taking steps to minimize cybersecurity risks in accordance with their fiduciary duties. In addition, rule 206(4)–7 under the Advisers Act already requires advisers to consider their fiduciary and regulatory obligations and formalize policies and procedures reasonably designed to address them. While rule 206(4)–7 does not enumerate specific elements that an adviser must include in its compliance program, advisers may already be assessing the cybersecurity risks created by their particular circumstances when developing their compliance policies and procedures to address such risks.

Other Commission rules also require advisers to consider cybersecurity. For example, as described above, advisers subject to Regulation S–P are required to, among other things, adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information.[325] In addition, advisers subject to Regulation S–ID must develop and implement a written identity theft program.[326] Nevertheless, while some advisers may have established effective cybersecurity programs under the existing regulatory framework, there are no Commission rules that explicitly require firms to adopt and implement comprehensive cybersecurity policies and procedures.

Recently, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency adopted a new rule that would require certain banking organizations in the United States to notify Federal banking regulators of any cybersecurity incidents within 36 hours of discovering an incident (''bank cybersecurity rule'').[327] To the extent that a bank or one of its subsidiaries is also registered with the Commission as an investment adviser, there may be overlapping notification requirements. Additionally, to the extent a firm is required to implement cybersecurity-related policies and procedures due to its status as a banking organization, if such a firm is also registered with the Commission, our proposed rules requiring advisers and funds to adopt and implement cybersecurity policies and procedures may result in some overlapping regulatory requirements with respect to cybersecurity. However, our proposed amendments related to cybersecurity are designed to address the cybersecurity risks created as a result of a firm's operations as an adviser or fund, which may not be sufficiently addressed under cybersecurity regulations applicable to banks.

In addition, the FTC recently amended their Standards for Safeguarding Customer Information that contains a number of modifications to the existing FTC Safeguards Rule with respect to data security requirements to protect customer financial information.[328] We understand that private funds are generally subject to the FTC Safeguards Rule and to the extent that a private fund is managed by an adviser that is registered with Commission, our proposed rule requiring advisers to adopt and implement cybersecurity policies and procedures may result in some overlapping regulatory requirements with respect to protecting information. However, our proposed amendments related to cybersecurity are designed to address the cybersecurity risks created as a result of an adviser's operations and not specifically those related to the protection of customer financial information by private funds.

2. Proposed Rule 38a–2

Commission staff have not identified any Federal rules that duplicate, overlap, or conflict with the proposed rule 38a–2.

3. Proposed Amendments to Rule 204–2

As part of proposed rule 206(4)–9 and proposed rule 204–6, we are proposing corresponding amendments to the books and records rule. There are no duplicative, overlapping, or conflicting Federal rules with respect to the proposed amendments to rule 204–2.

4. Proposed Rule 204–6

Proposed rule 204–6 would create a new reporting requirement for advisers to report significant cybersecurity incidents to the Commission. There are no duplicative, overlapping, or conflicting Federal rules with respect to proposed rule 204–6.

5. Form ADV–C

Our proposed Form ADV–C would require advisers to provide information regarding a significant cybersecurity incident through a series of check-the-box and fill-in-the-blank questions related to the nature and extent of the cybersecurity incident and the adviser's response to the incident. The information requested on proposed Form ADV–C would not be duplicative of, overlap, or conflict with, other information advisers are required to provide on Form ADV.

[325] *See supra* footnote 14 and accompanying text.

[326] *See supra* footnote 16.

[327] *See* Office of the Comptroller of the Currency, Federal Reserve System, and Federal Deposit Insurance Corporation, *Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers* (Nov. 18, 2021) [86 FR 66424 (Nov. 23, 2021)].

[328] *See* Federal Trade Commission, *Standards for Safeguarding Customer Information* (Oct. 27, 2021) [86 FR 70272 (Dec. 9, 2021)].

6. Proposed Amendments to Form ADV

Our proposed new Item 20 in Form ADV Part 2A would require advisers to: (1) Describe any cybersecurity risks that could materially affect the advisory services they offer and how they assess, prioritize, and address cybersecurity risks; and (2) describe any cybersecurity incidents that have occurred in the past two fiscal years that have significantly disrupted or degraded the adviser's ability to maintain critical operations, or has led to the unauthorized access or use of adviser information, resulting in substantial harm to the adviser or its clients. These proposed requirements would not be duplicative of, overlap, or conflict with, other information advisers are required to provide on Form ADV.

7. Proposed Amendments to Rule 204–3

Our proposed amendments to rule 204–3(b) would require an adviser to promptly deliver interim brochure amendments to existing clients if the adviser adds disclosure of a cybersecurity incident to its brochure or materially revises information already disclosed in its brochure about such an incident. There are no duplicative, overlapping, or conflicting Federal rules with respect to the proposed amendments to rule 204–3.

8. Proposed Amendments to Fund Registration Forms, Rules Under the Securities Act, and Regulation S–T

Commission staff have not identified any Federal rules that duplicate, overlap, or conflict with the proposed amendments to Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6, conforming amendments to rule 485 and 497 under the Securities Act, and rule 11 and rule 405 of Regulation S–T.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic effect on small entities. We considered the following alternatives for small entities in relation to our proposal: (1) Exempting advisers and funds that are small entities from the proposed policies and procedures and disclosure requirements, to account for resources available to small entities; (2) establishing different requirements or frequency, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the proposal for small entities; and (4) using design rather than performance standards.

1. Proposed Rule 206(4)–9

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. We considered the following alternatives for small entities in relation to the proposed rule 206(4)–9: (1) Differing compliance or reporting requirements that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for such small entities; (3) the use of design rather than performance standards; and (4) an exemption from coverage of the proposed rule, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance or reporting requirements for small advisers, or exempting small advisers from the proposed rule, or any part thereof, would be inappropriate under these circumstances. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the proposed rule 206(4)–9 and corresponding changes to rule 204–2. As discussed above, we believe that the proposed rule would result in multiple benefits to clients. For example, having appropriate cybersecurity policies and procedures in place would help address any cybersecurity risks and incidents that occur at the adviser and help protect advisers and their clients from greater risk of harm. We believe that these benefits should apply to clients of smaller firms as well as larger firms. Establishing different conditions for large and small advisers even though advisers of every type and size rely on technology systems and networks and thus face increasing cybersecurity risks would negate these benefits. The corresponding changes to rule 204–2 are narrowly tailored to address proposed rule 206(4)–9.

Regarding the second alternative, we believe the current proposal is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above, the proposed rule would require advisers to adopt and implement cybersecurity policies and procedures that specifically address: (1) Risk assessment; (2) user security and access; (3) information protection; (4) cybersecurity threat and vulnerability management; and (5) cybersecurity incident response and recovery.[329] Advisers would also be required under the rule to conduct an annual review and assessment of these policies and procedures. The proposed rule would provide clarity in the existing regulatory framework regarding cybersecurity and serve as an explicit requirement for firms to adopt and implement comprehensive cybersecurity programs.

Regarding the third alternative, we determined to use performance standards rather than design standards. Although the proposed rule requires policies and procedures that are reasonably designed to address a certain number of elements, we do not place certain conditions or restrictions on how to adopt and implement such policies and procedures. The general elements are designed to enumerate core areas that firms must address when adopting, implementing, reassessing and updating their cybersecurity policies and procedures. As discussed above, given the number and varying characteristics of advisers, we believe firms need the ability to tailor their cybersecurity policies and procedures based on their individual facts and circumstances. Proposed rule 206(4)–9 therefore allows advisers to address the general elements based on the particular cybersecurity risks posed by each adviser's operations and business practices. The proposed rule would also provide flexibility for the adviser to determine the personnel who would implement and oversee the effectiveness of its cybersecurity policies and procedures.

2. Proposed Rule 38a–2 and Proposed Amendments to the Fund Registration Forms, Rules Under the Securities Act, and Regulation S–T

We do not believe that exempting small funds from the provisions of the proposed amendments would permit us to achieve our stated objectives. We believe funds of all sizes are subject to cybersecurity risks and may experience cybersecurity incidents. Cybersecurity incidents affecting funds also can cause substantial harm to their investors, including by interfering with the fund's ability to execute its investment strategy or theft of fund or client data. If the proposal did not include policies and procedures requirements for small funds, we believe the lack could raise investor protection concerns for investors in small funds, in that a small fund would not be subject to the same compliance framework and therefore

[329] *See* proposed rule 206(4)–9. *See also supra* section II.A.

may not have as robust of a compliance program as funds that were subject to the required framework. For the same reasons, we also do not believe that it would be appropriate to establish different cybersecurity requirements, frequency of disclosure or reporting, or interactive data requirements for small funds.

We also believe the current proposal is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above, the proposed rule would require funds to adopt and implement cybersecurity policies and procedures that specifically address: (1) Risk assessment; (2) user security and access; (3) information protection; (4) cybersecurity threat and vulnerability management; and (5) cybersecurity incident response and recovery.[330] Funds would also be required under the rule to conduct an annual review and assessment of these policies and procedures. The proposed rule would provide clarity in the existing regulatory framework regarding cybersecurity and serve as an explicit requirement for funds to adopt and implement comprehensive cybersecurity programs.

The costs associated with the proposed amendments would vary depending on the fund's particular circumstances, and on the number and severity of cybersecurity incidents that a fund experiences. These variations would result in different burdens on funds' resources. In particular, we expect that a fund that has experienced multiple cybersecurity incidents would bear more expense related to the proposed amendments. To protect investors of both small and large funds, we believe that it is appropriate for the costs associated with the proposed amendments to be based on the costs of: (1) Implementing a fund's cybersecurity policies and procedures; and (2) disclosing any significant fund cybersecurity incident, instead of adjusting these costs to account for a fund's size.

Finally, with respect to the use of design rather than performance standards, the proposed amendments generally use design standards for all funds subject to the amendments, regardless of size. Although the proposed rule requires policies and procedures that are reasonably designed to address a certain number of elements, we do not place certain conditions or restrictions on how to adopt and implement such policies and procedures. The general elements are designed to enumerate core areas that firms must address when adopting, implementing, reassessing and updating their cybersecurity policies and procedures. We believe that providing funds with the flexibility permitted in the proposal to design the fund's own individual cybersecurity policies and procedures is appropriate, because the result would be compliance activities that are tailored to the particular cybersecurity risks posed by each fund's operations and business practices. The proposed rule would provide flexibility for a fund to determine the personnel who would implement and oversee the effectiveness of its cybersecurity policies and procedures. In addition, we are aware that cybersecurity threats and risk change to reflect current technology, and the proposed design standards for funds would permit them to be able to modify their cybersecurity programs in response to these developments.

3. Proposed Rule 204–6 and Form ADV–C

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. We considered the following alternatives for small entities in relation to the proposed rule 204–6 and the corresponding proposed Form ADV–C: (1) Differing compliance or reporting requirements that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule and Form ADV–C for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed rule and Form ADV–C, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance or reporting requirements for small advisers, or exempting small advisers from the proposed rule, or any part thereof, would be inappropriate under these circumstances. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under proposed rule 204–6 and proposed Form ADV–C, as well as corresponding changes to rule 204–2. As discussed above, we believe that the proposed rule and Form ADV–C would result in multiple benefits to clients. For example, having this reporting would help us in our efforts to protect investors in connection with cybersecurity incidents by providing prompt notice of these incidents. It would also help us better assess the potential effect of the cybersecurity incident on the adviser and its covered clients and whether there is the potential for client and investor harm. We believe that these benefits should apply to clients of smaller firms as well as larger firms. As mentioned above, establishing different conditions for large and small advisers even though advisers of every type and size rely on technology systems and networks and thus face increasing cybersecurity risks would negate these benefits.

Regarding the second alternative, we believe the current proposal for rule 204–6 and Form ADV–C is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above, proposed rule 204–6 would require advisers to report to the Commission through Form ADV–C, any significant cybersecurity incidents within 48 hours after having a reasonable basis to conclude that any such incident has occurred.[331] These proposals would provide a new, clear opportunity in the existing regulatory framework for reporting to the Commission with respect to significant cybersecurity incidents.

Regarding the third alternative, we determined to use a combination of performance and design standards. Our proposal requires all advisers, including small advisers, to report using Form ADV–C promptly, but in no event more than 48 hours after, having a reasonable basis to believe a significant cybersecurity incident has occurred. Once the adviser makes the determination that an incident would meet the definition of a significant cybersecurity incident, it is required to report on Form ADV–C within 48 hours. We believe this requirement should apply to all advisers, regardless of size, given that all types of advisers are susceptible to cybersecurity incidents, and obtaining such information from all advisers would help to ensure that the Commission has accurate and timely information with respect to adviser and fund cybersecurity incidents to better allocate resources when evaluating and responding to these incidents.

We also considered an alternative that would have increased the scope of the proposed rule's performance standards

[330] *See* proposed rule 38a–2; *see also supra* section II.A.

[331] *See* proposed rule 204–6; *see also supra* section II.B.

and removed the 48-hour threshold, solely relying on the word ''promptly.'' However, we believe providing a specific time period would provide advisers, including small advisers, with the opportunity to confirm its determination and prepare the report while still providing the Commission with timely notice about the incident.

1. Proposed Amendments to Form ADV and Rule 204–3

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. We considered the following alternatives for small entities in relation to the proposed amendments to Form ADV and rule 204–3: (1) Differing compliance or reporting requirements that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for such small entities; (3) the use of design rather than performance standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance or reporting requirements for small advisers, or exempting small advisers from the proposed amendments, or any part thereof, would be inappropriate under these circumstances. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the proposed amendments to Form ADV and rule 204–3. As discussed above, we believe that the proposed amendments would result in multiple benefits to clients. For example, the proposed amendments to Form ADV would improve the ability of clients and prospective clients to evaluate and understand relevant cybersecurity risks and incidents that advisers and their personnel face and their potential effect on the advisers' services. Also, requiring advisers to deliver interim brochure amendments to existing clients promptly if the adviser adds or materially revises disclosure of a cybersecurity incident, would enhance investor protection by enabling clients to take protective or remedial measures as appropriate. Clients and investors may also be able to determine whether their engagement of an adviser remains appropriate and consistent with their investment objectives better. We believe that these benefits should apply to clients of smaller firms as well as larger firms. Establishing different conditions for large and small advisers even though all advisers, regardless of type and size, face cybersecurity risks would negate these benefits.

Regarding the second alternative, we believe the current proposed amendments are clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above, the proposed amendments to Form ADV would require advisers to disclose information regarding cybersecurity risks that could materially affect the advisory relationship.[332] The proposed amendments to rule 204–3 would also require prompt delivery of interim brochure supplements if an adviser adds or materially revises disclosure related to a cybersecurity incident.[333] The proposed amendments to Form ADV would provide for advisers to present clear and meaningful cybersecurity disclosure to their clients and prospective clients, and the proposed amendments to rule 204–3 would assist in providing clients updated cybersecurity disclosures.

Regarding the third alternative, we determined to use a mix of performance and design standards, regardless of size, with respect to the proposed amendments. We believe the amendments already appropriately use performance rather than design standards in many instances. The proposed amendments to Form ADV do not contain any specific limitations or restrictions on the disclosure of cybersecurity risks and incidents. As discussed above, given the number and varying types of advisers, as well as the types of cybersecurity risks and incidents that may be present or occur at a particular adviser, respectively, we believe firms need the ability to tailor their disclosures according to their own circumstances. The proposed amendments to rule 204–3 do not change the performance standard already present in rule 204–3. Advisers may, with client consent, deliver their brochures and supplements, along with any updates, to clients electronically.[334] Advisers may also incorporate their supplements into the brochure or provide them separately.

G. Solicitation of Comments

We encourage written comments on the matters discussed in this IRFA. We solicit comment on the number of small entities subject to the proposed rule 206(4)–9, proposed rule 38a–2, proposed rule 204–6, proposed Form ADV–C, and proposed amendments to rule 204–2, rule 204–3, Form ADV, and the fund registration forms. We also solicit comment on the potential effects discussed in this analysis; and whether this proposal could have an effect on small entities that has not been considered. We request that commenters describe the nature of any effect on small entities and provide empirical data to support the extent of such effect.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''773 we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation. We request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Authority

The Commission is proposing rule 38a–2 under the authority set forth in sections 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–30(a), and 80a–37(a)]. The Commission is proposing amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11]. The Commission is proposing amendments to rule 204–3 under the Advisers Act under the authority set forth in sections 203(d), 206(4), 211(a) and 211(h) of the Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a) and (h)]. The Commission is proposing rule 204–6, rule 206(4)–9, and Form ADV–C under the Advisers Act under the authority set forth in sections 203(d),

[332] *See supra* section II.C.

[333] *See* proposed rule 204–3; *see also supra* section II.C.

[334] Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Advisers Act Release No. 1562 (May 9, 1996) [61 FR 24644 (May 15, 1996)].

206(4), and 211(a) of the Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a)]. The Commission is proposing amendments to Form N–1A, Form N–2, Form N–3, Form N–4, Form N–6, Form N–8B–2, and Form S–6 under the authority set forth in sections 8, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–29, and 80a–37] and sections 6, 7(a), 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77g(a), 77j, 77s(a)]. The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Exchange Act [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)]. The Commission is proposing amendments to rule 232.11 and 232.405 under the authority set forth in section 23 of the Exchange Act [15 U.S.C. 78w]. The Commission is proposing amendments to rule 230.485 and rule 230.497 under the authority set forth in sections 10 and 19 of the Securities Act [15 U.S.C. 77j and 77s].

List of Subjects

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Rule and Form Amendments

For the reasons set forth in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

* * * * *

■ 2. Amend § 230.485 by revising paragraph (c)(3) to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(c) * * *

(3) A registrant's ability to file a post-effective amendment, other than an amendment filed solely for purposes of submitting an Interactive Data File, under paragraph (b) of this section is automatically suspended if a registrant fails to submit any Interactive Data File (as defined in § 232.11 of this chapter) required by the Form on which the registrant is filing the post-effective amendment. A suspension under this paragraph (c)(3) shall become effective at such time as the registrant fails to submit an Interactive Data File as required by the relevant Form. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment that is filed after the suspension becomes effective, but shall not apply to any post-effective amendment that was filed before the suspension became effective. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of this section and shall not otherwise affect any post-effective amendment. Any suspension under this paragraph (c)(3) shall terminate as soon as a registrant has submitted the Interactive Data File required by the relevant Form.

* * * * *

■ 3. Amend § 230.497 by revising paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used. Investment companies filing on Forms N–1A, N–3, N–4, or N–6 must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the Form on which the registrant files its registration statement.

* * * * *

(e) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission. Investment companies filing on Forms N–1A, N–3, N–4, or N–6 must submit an Interactive Data File (as defined in § 232.11 of this chapter) if required by the Form on which the registrant files its registration statement.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 4. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 5. Amend § 232.11 by revising the definition of ''Related Official Filing'' to read as follows:

§ 232.11 Definition of terms used in this part.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which all or part of an Interactive Data File appears as an exhibit or, in the case of a filing on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), Form N–3 (§§ 239.17a and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), Form N–6 (§§ 239.17c and

274.11d of this chapter), Form N–8B–2 (§ 274.12 of this chapter), Form S–6 (§ 239.16 of this chapter), and Form N–CSR (§§ 249.331 and 274.128 of this chapter), and, to the extent required by § 232.405 [Rule 405 of Regulation S–T] for a business development company as defined in § 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), Form 10–K (§ 249.310 of this chapter), Form 10–Q (§ 249.308a of this chapter), and Form 8–K (§ 249.308 of this chapter), the ASCII or HTML format part of an official filing that contains the information to which an Interactive Data File corresponds.

* * * * *

■ 6. Amend § 232.405 by revising the introductory text, paragraphs (a)(2), (a)(3) introductory text, (a)(3)(i) introductory text, and (3)(ii), (a)(4), (b)(1) introductory text, (b)(2), (b)(3)(iii), Note 1 to § 232.405(b)(1), and Note 2 to § 232.405 to read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

(3) Be submitted using Inline XBRL:

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a et seq.), a separate account as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4) and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter); General Instruction 5 of Form S–6 (§ 239.16 of this chapter); or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter).

(b) * * *

(1) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

Note 1 to § 232.405(b)(1): It is not permissible for the Interactive Data File to present only partial face financial statements, such as by excluding

comparative financial information for prior periods.

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940, a separate account (as defined in section 2(a)(14) of the Securities Act) registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the information set forth in:

(i) Items 2, 3, 4, and 10(a)(4) of §§ 239.15A and 274.11A of this chapter (Form N–1A);

(ii) Items 2, 4, 5, 11, 16A, 18 and 19 of §§ 239.17a and 274.11b of this chapter (Form N–3);

(iii) Items 2, 4, 5, 10, 16A, and 17 of §§ 239.17b and 274.11c of this chapter (Form N–4);

(iv) Items 2, 4, 5, 10, 11, 16A and 18 of §§ 239.17c and 274.11d of this chapter (Form N–6); or

(v) Item 9A of § 274.12 of this chapter (Form N–8B–2), including to the extent required by § 239.16 of this chapter (Form S–6); as applicable.

(3) * * *

(iii) As applicable, all of the information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, 10.5, and 13 of Form N–2 in any registration statement or post-effective amendment thereto filed on Form N–2; or any form of prospectus filed pursuant to § 230.424 of this chapter (Rule 424 under the Securities Act); or, if a Registrant is filing a registration statement pursuant to General Instruction A.2 of Form N–2, any filing on Form N–CSR, Form 10–K, Form 10–Q, or Form 8–K to the extent such information appears therein.

* * * * *

Note 2 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S–1), § 239.13 of this chapter (Form S–3), § 239.25 of this chapter (Form S–4), § 239.18 of this chapter (Form S–11), § 239.31 of this chapter (Form F–1), § 239.33 of this chapter (Form F–3), § 239.34 of this chapter (Form F–4), § 249.310 of this chapter (Form 10–K), § 249.308a of this chapter (Form 10–Q), and § 249.308 of this chapter (Form 8–K). Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40–F) and § 249.306 of this chapter (Form 6–K). Section 229.601(b)(101) (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6 (§ 239.16 of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 8. Amend Form S–6 (referenced in §§ 239.16) by adding General Instruction 5 as follows:

Note: The text of Form S–6 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form S–6

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General Instructions

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Instruction 5. Interactive Data

(a) An Interactive Data File as defined in rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form S–6 that includes or amends information provided in response to item 9A of Form N–8B–2 (as provided pursuant to Instruction 1.(a) of the Instructions as to the Prospectus of this Form).

(1) Except as required by paragraph (a)(2), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(2) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), or (vii) of rule 485 under the Securities Act [17 CFR 230.485(b)], the Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which the Interactive Data Filing relates that is submitted on or before the date the post-effective amendment that

contains the related information becomes effective.

(b) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 9. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 10. Section 270.38a–2 is added to read as follows:

§ 270.38a–2 Cybersecurity policies and procedures of certain investment companies.

(a) *Cybersecurity policies and procedures.* Each fund must adopt and implement written policies and procedures that are reasonably designed to address cybersecurity risks, including policies and procedures that:

(1) *Risk assessment.* (i) Require periodic assessments of cybersecurity risks associated with fund information systems and fund information residing therein including requiring the fund to:

(A) Categorize and prioritize cybersecurity risks based on an inventory of the components of the fund information systems and fund information residing therein and the potential effect of a cybersecurity incident on the fund; and

(B) Identify the fund's service providers that receive, maintain, or process fund information, or are otherwise permitted to access fund information systems and any fund information residing therein, and assess the cybersecurity risks associated with the fund's use of these service providers.

(ii) Require written documentation of any risk assessments.

(2) *User security and access.* Require controls designed to minimize user-related risks and prevent the unauthorized access to fund information systems and fund information residing therein including:

(i) Requiring standards of behavior for individuals authorized to access fund information systems and any fund information residing therein, such as an acceptable use policy;

(ii) Identifying and authenticating individual users, including implementing authentication measures that require users to present a combination of two or more credentials for access verification;

(iii) Establishing procedures for the timely distribution, replacement, and revocation of passwords or methods of authentication;

(iv) Restricting access to specific fund information systems or components thereof and fund information residing therein solely to individuals requiring access to such systems and information as is necessary for them to perform their responsibilities and functions on behalf of the fund; and

(v) Securing remote access technologies.

(3) *Information protection.*

(i) Require measures designed to monitor fund information systems and protect fund information from unauthorized access or use, based on a periodic assessment of the fund information systems and fund information that resides on the systems that takes into account:

(A) The sensitivity level and importance of fund information to its business operations;

(B) Whether any fund information is personal information;

(C) Where and how fund information is accessed, stored and transmitted, including the monitoring of fund information in transmission;

(D) Fund information systems access controls and malware protection; and

(E) The potential effect a cybersecurity incident involving fund information could have on the fund and its shareholders, including the ability for the fund to continue to provide services.

(ii) Require oversight of service providers that receive, maintain, or process fund information, or are otherwise permitted to access fund information systems and any fund information residing therein and through that oversight document that such service providers, pursuant to a written contract between the fund and any such service provider, are required to implement and maintain appropriate measures, including the practices described in paragraphs (a)(1), (2), (3)(i), (4), and (5) of this section, that are designed to protect fund information and fund information systems.

(4) *Cybersecurity threat and vulnerability management.* Require measures to detect, mitigate, and remediate any cybersecurity threats and vulnerabilities with respect to fund information systems and the fund information residing therein.

(5) *Cybersecurity incident response and recovery.* (i) Require measures to detect, respond to, and recover from a cybersecurity incident, including policies and procedures that are reasonably designed to ensure:

(A) Continued operations of the fund;

(B) The protection of fund information systems and fund information residing therein;

(C) External and internal cybersecurity incident information sharing and communications; and

(D) Reporting of a significant fund cybersecurity incident by the fund's adviser under § 275.204–6 (Rule 204–6 under the Investment Advisers Act of 1940).

(ii) Require written documentation of any cybersecurity incident, including the fund's response to and recovery from such an incident.

(b) *Annual review.* A fund must, at least annually, review and assess the design and effectiveness of the cybersecurity policies and procedures required by paragraph (a) of this section, including whether they reflect changes in cybersecurity risk over the time period covered by the review.

(c) *Board oversight.* A fund must:

(1) Obtain the initial approval of the fund's board of directors, including a majority of the directors who are not interested persons of the fund, of the fund's policies and procedures; and

(2) Provide, for review by the fund's board of directors, a written report prepared no less frequently than annually by the fund that, at a minimum, describes the review, the assessment, and any control tests performed, explains their results, documents any cybersecurity incident that occurred since the date of the last report, and discusses any material changes to the policies and procedures since the date of the last report.

(d) *Unit investment trusts.* If the fund is a unit investment trust, the fund's principal underwriter or depositor must:

(i) Approve the fund's policies and procedures; and

(ii) Receive all written reports required by paragraph (c) of this section.

(e) *Recordkeeping.* The fund must maintain:

(1) A copy of the policies and procedures that are in effect, or at any time within the past five years were in effect, in an easily accessible place;

(2) Copies of written reports provided to the board of directors pursuant to paragraph (c)(2) of this section (or, if the fund is a unit investment trust, to the fund's principal underwriter or depositor, pursuant to paragraph (d) of this section) for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place;

(3) Any records documenting the review pursuant to paragraph (c)(2) of

this section for at least five years after the end of the fiscal year in which the annual review was conducted, the first two years in an easily accessible place;

(4) Any report provided to the Commission pursuant to paragraph (a)(5) of this section for at least five years after the provision of the report, the first two years in an easily accessible place;

(5) Records documenting the occurrence of any cybersecurity incident, including records related to any response and recovery from such incident pursuant to paragraph (a)(5) of this section, for at least five years after the date of the incident, the first two years in an easily accessible place; and

(6) Records documenting the risk assessment pursuant to paragraph (a)(1) of this section for at least five years after the date of the assessment, the first two years in an easily accessible place.

(f) *Definitions.* For purposes of this section:

Cybersecurity incident means an unauthorized occurrence on or conducted through a fund's information systems that jeopardizes the confidentiality, integrity, or availability of a fund's information systems or any fund information residing therein.

Cybersecurity risk means financial, operational, legal, reputational, and other adverse consequences that could result from cybersecurity incidents, threats, and vulnerabilities.

Cybersecurity threat means any potential occurrence that may result in an unauthorized effort to adversely affect the confidentiality, integrity or availability of a fund's information systems or any fund information residing therein.

Cybersecurity vulnerability means a vulnerability in a fund's information systems, information system security procedures, or internal controls, including vulnerabilities in their design, configuration, maintenance, or implementation that, if exploited, could result in a cybersecurity incident.

Fund means a registered investment company or a business development company.

Fund information means any electronic information related to the fund's business, including personal information, received, maintained, created, or processed by the fund.

Fund information systems means the information resources owned or used by the fund, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of fund information to maintain or support the fund's operations.

Personal information means any information that can be used, alone or in conjunction with any other information, to identify an individual, such as name, date of birth, place of birth, telephone number, street address, mother's maiden name, Social Security number, driver's license number, electronic mail address, account number, account password, biometric records or other nonpublic authentication information.

Significant fund cybersecurity incident means a cybersecurity incident, or a group of related cybersecurity incidents, that significantly disrupts or degrades the fund's ability to maintain critical operations, or leads to the unauthorized access or use of fund information, where the unauthorized access or use of such information results in substantial harm to the fund or to an investor whose information was accessed.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 11. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, 80a–37, otherwise noted.

■ 12. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by revising General Instruction C.3.(g)(i) and (ii), and adding Item 10(a)(4). The revisions read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–1A

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General Instructions

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C. Preparation of the Registration Statement

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3. * * *

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(g) Interactive Data File

(i) An Interactive Data File (rule 232.11 of Regulation S–T [17 CFR 232.11]) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2, 3, 4, or 10(a)(4).

* * * * *

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 3, 4, or 10(a)(4) that varies from the registration statement. All interactive data must be submitted with the filing made pursuant to rule 497.

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Part A—INFORMATION REQUIRED IN A PROSPECTUS

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Item 10. Management, Organization, and Capital Structure

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(4) *Significant Fund Cybersecurity Incidents.* Provide a description of any significant fund cybersecurity incident as defined by rule 38a–2 of the Investment Company Act (17 CFR 270.38a–2) that has or is currently affecting the Fund or its service providers.

Instructions

1. The disclosure must include all significant fund cybersecurity incidents that have occurred within the last 2 fiscal years, as well as any currently ongoing.

2. The description of each incident must include the following information to the extent known: The entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered, or accessed or used for any other unauthorized purpose; the effect of the incident on the Fund's operations; and whether the Fund or service provider has remediated or is currently remediating the incident.

* * * * *

■ 13. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by revising General Instruction I.2 and 3, Item 13 is to read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–2

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General Instructions

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I. Interactive Data

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2. An Interactive Data File is required to be submitted to the Commission in

the manner provided by Rule 405 of Regulation S–T for any registration statement or post-effective amendment thereto filed on Form N–2 or for any form of prospectus filed pursuant to Rule 424 under the Securities Act [17 CFR 230.424] that includes or amends information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, 10.5, or 13. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates, on or before the date the registration statement or post-effective amendment that contains the related information becomes effective. Interactive Data Files must be submitted with the filing made pursuant to Rule 424.

3. If a Registrant is filing a registration statement pursuant to General Instruction A.2, an Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any of the documents listed in General Instruction F.3.(a) or General Instruction F.3.(b) that include or amend information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, 10.5, or 13. All interactive data must be submitted with the filing of the document(s) listed in General Instruction F.3.(a) or General Instruction F.3.(b).

* * * * *

Part A—INFORMATION REQUIRED IN A PROSPECTUS

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Item 13. Significant Fund Cybersecurity Incidents

Provide a description of any significant fund cybersecurity incident as defined by rule 38a–2 of the Investment Company Act (17 CFR 270.38a–2) that has or is currently affecting the Registrant, any subsidiary of the Registrant, or the Registrant's service providers.

Instructions.

1. The disclosure must include all significant fund cybersecurity incidents that have occurred within the last 2 fiscal years, as well as any currently ongoing.

2. The description of each incident must include the following information to the extent known: The entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered, or accessed or used for any other unauthorized purpose; the effect of the incident on the Registrant's operations; and whether the Registrant, any subsidiary of the Registrant, or any service provider of the Registrant has remediated or is currently remediating the incident.

■ 14. Amend Form N–3 (referenced in §§ 239.17a and 274.11b) by revising General Instruction C.3(h)(i) and (ii) and adding new Item 16A to reads as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–3

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GENERAL INSTRUCTIONS

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C. Preparation of the Registration Statement

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3. Additional Matters

* * * * *

(h) *Interactive Data*

(i) An Interactive Data File (see rule 232.11 of Regulation S–T [17 CFR 232.11]) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form N–3 that includes or amends information provided in response to Items 2, 4, 5, 11, 16A, 18, or 19 with regards to Contracts that are being sold to new investors.

* * * * *

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 4, 5, 11, 16A, 18 or 19 that varies from the registration statement with regards to Contracts that are being sold to new investors. All interactive data must be submitted with the filing made pursuant to rule 497.

* * * * *

PART A—INFORMATION REQUIRED IN A PROSPECTUS

* * * * *

Item 16A. Significant Fund Cybersecurity Incidents

Provide a description of any significant fund cybersecurity incident as defined by rule 38a–2 of the Investment Company Act (17 CFR 270.38a–2) that has or is currently affecting the Registrant, Insurance Company or the Registrant's service providers.

Instructions.

1. The disclosure must include all significant fund cybersecurity incidents that have occurred within the last 2 fiscal years, as well as any currently ongoing.

2. The description of each incident must include the following information to the extent known: The entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered, or accessed or used for any other unauthorized purpose; the effect of the incident on the Registrant's operations; and whether the Registrant, Insurance Company, or any service provider of the Registrant has remediated or is currently remediating the incident.

* * * * *

■ 15. Amend Form N–4 (referenced in §§ 239.17b and 274.11c) by revising General Instruction C.3(h)(i) and (ii) and adding new Item 16A to read as follows:

Note: The text of Form N–4 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–4

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. Additional Matters

* * * * *

(h) Interactive Data

(i) An Interactive Data File (see rule 232.11 of Regulation S–T [17 CFR 232.11]) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form N–4 that includes or amends information provided in response to Items 2, 4, 5, 10, 16A, or 17 with regards to Contracts that are being sold to new investors.

* * * * *

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 4, 5, 10, 16A, or 17 that varies from the registration

statement with regards to Contracts that are being sold to new investors. All interactive data must be submitted with the filing made pursuant to rule 497.

* * * * *

PART A—INFORMATION REQUIRED IN A PROSPECTUS

* * * * *

Item 16A. Significant Fund Cybersecurity Incidents

Provide a description of any significant fund cybersecurity incident as defined by rule 38a–2 of the Investment Company Act (17 CFR 270.38a–2) that has or is currently affecting the Registrant, Depositor, or the Registrant's service providers.

Instructions.

1. The disclosure must include all significant fund cybersecurity incidents that have occurred within the last 2 fiscal years, as well as any currently ongoing.

2. The description of each incident must include the following information to the extent known: The entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered, or accessed or used for any other unauthorized purpose; the effect of the incident on the Registrant's operations; and whether the Registrant, Depositor, or any service provider of the Registrant has remediated or is currently remediating the incident.

* * * * *

■ 16. Amend Form N–6 (referenced in §§ 239.17c and 274.11d) by revising General Instruction C.3(h)(i) and (ii) and adding new Item 16A to read as follows:

Note: The text of Form N–6 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–6

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. Additional Matters

* * * * *

(h) Interactive Data

(i) An Interactive Data File (see rule 232.11 of Regulation S–T [17 CFR 232.11]) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form N–6 that includes or amends information provided in response to Items 2, 4, 5, 10, 11, 16A, or 18 with regards to Contracts that are being sold to new investors.

* * * * *

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 4, 5, 10, 11, 16A, or 18 that varies from the registration statement with regards to Contracts that are being sold to new investors. All interactive data must be submitted with the filing made pursuant to rule 497.

* * * * *

PART A—INFORMATION REQUIRED IN A PROSPECTUS

* * * * *

Item 16A. Significant Fund Cybersecurity Incidents

Provide a description of any significant fund cybersecurity incident as defined by rule 38a–2 of the Investment Company Act (17 CFR 270.38a–2) that has or is currently affecting the Registrant, the Depositor or the Registrant's service providers.

Instructions.

1. The disclosure must include all significant fund cybersecurity incidents that have occurred within the last 2 fiscal years, as well as any currently ongoing.

2. The description of each incident must include the following information to the extent known: The entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered, or accessed or used for any other unauthorized purpose; the effect of the incident on the Registrant's operations; and whether the Registrant, Depositor, or any service provider of the Registrant has remediated or is currently remediating the incident.

■ 17. Amend Form N–8B–2 (referenced in § 274.12) by adding new General Instruction 2.(*l*) and new Item 9A to read as follows:

Note: The text of Form N–8B–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

FORM N–8B–2

* * * * *

GENERAL INSTRUCTIONS FOR FORM N–8B–2

* * * * *

2. Preparation and Filing of Registration Statement

* * * * *

(l) Interactive Data

(1) An Interactive Data File as defined in rule 11 of Regulation S–T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S–T [17 CFR 232.405] for any registration statement on Form N–8B–2 that includes information provided in response to Item 9A pursuant to Instruction 2. The Interactive Data File must be submitted with the filing to which it relates on the date such filing becomes effective.

(2) All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual.

* * * * *

I. ORGANIZATION AND GENERAL INFORMATION

* * * * *

9A. Provide a description of any significant fund cybersecurity incident as defined by rule 38a–2 of the Investment Company Act of 1940 (17 CFR 270.38a–2) that has or is currently affecting the trust, the depositor, or the trust's service providers.

Instructions:

(a) The disclosure must include all significant fund cybersecurity incidents that have occurred within the last 2 fiscal years, as well as any currently ongoing.

(b) The description of each incident must include the following information to the extent known: the entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered, or accessed or used for any other unauthorized purpose; the effect of the incident on the trust's operations; and whether the trust, the depositor, or any service provider of the trust has remediated or is currently remediating the incident.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 18. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

■ 19. Amend § 275.204–2 by:
■ a. Revising paragraph (a)(17)(i);
■ b. Removing the period at the end of paragraph (a)(17)(iii) and adding a semicolon in its place; and
■ c. Adding paragraphs (a)(17)(iv) through (vii).

The additions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(17) * * *

(i) A copy of the investment adviser's policies and procedures formulated pursuant to §§ 275.206(4)–7(a) and 275.206(4)–9 that are in effect, or at any time within the past five years were in effect;

* * * * *

(iv) A copy of the investment adviser's written report documenting the investment adviser's annual review of the cybersecurity policies and procedures conducted pursuant to § 275.206(4)–9(b) in the last five years;

(v) A copy of any Form ADV–C, and amendments filed by the adviser under § 275.204–6 in the last five years;

(vi) Records documenting the occurrence of any cybersecurity incident, as defined in § 275.206(4)–9(c), occurring in the last five years, including records related to any response and recovery from such an incident; and

(vii) Records documenting any risk assessment conducted pursuant to the cybersecurity policies and procedures required by § 275.206(4)–9(a)(1) in the last five years.

* * * * *

■ 20. Amend § 275.204–3 by revising paragraph (b)(4) to read as follows:

§ 275.204–3 Delivery of brochures and brochure supplements.

* * * * *

(b) * * *

(4) Deliver the following to each client promptly after you create an amended brochure or brochure supplement, as applicable, if the amendment adds disclosure of an event or incident, or materially revises information already disclosed about an event or incident: in response to Item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV (Disciplinary Information), or Item 20.B of Part 2A of Form ADV (Cybersecurity Risks and Incidents);

(i) The amended brochure or brochure supplement, as applicable, along with a statement describing the material facts relating to the change in disciplinary information or information about a significant cybersecurity incident; or

(ii) A statement describing the material facts relating to the change in disciplinary information or information about a significant cybersecurity incident.

* * * * *

■ 21. Section 275.204–6 is added to read as follows:

§ 275.204–6 Cybersecurity incident reporting.

(a) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) shall:

(1) Report to the Commission any significant adviser cybersecurity incident or significant fund cybersecurity incident, promptly, but in no event more than 48 hours, after having a reasonable basis to conclude that any such incident has occurred or is occurring by filing Form ADV–C electronically on the Investment Adviser Registration Depository (IARD).

(2) Amend any previously filed Form ADV–C promptly, but in no event more than 48 hours after:

(i) Any information previously reported to the Commission on Form ADV–C pertaining to a significant adviser cybersecurity incident or a significant fund cybersecurity becoming materially inaccurate;

(ii) Any new material information pertaining to a significant adviser cybersecurity incident or a significant fund cybersecurity incident previously reported to the Commission on Form ADV–C being discovered; or

(iii) Any significant adviser cybersecurity incident or significant fund cybersecurity incident being resolved or any internal investigation pertaining to such an incident being closed.

(b) For the purposes of this section:

Adviser information and *cybersecurity incident* have the same meanings as in § 275.206(4)–9 (Rule 206(4)–9 under the Investment Advisers Act of 1940).

Significant adviser cybersecurity incident means a cybersecurity incident, or a group of related cybersecurity incidents, that significantly disrupts or degrades the adviser's ability, or the ability of a private fund client of the adviser, to maintain critical operations, or leads to the unauthorized access or use of adviser information, where the unauthorized access or use of such information results in:

(i) Substantial harm to the adviser; or

(ii) Substantial harm to a client, or an investor in a private fund, whose information was accessed.

Significant fund cybersecurity incident has the same meaning as in § 270.38a–2 of this chapter (Rule 38a–2 under the Investment Company Act of 1940).

■ 22. Section 275.206(4)–9 is added to read as follows:

§ 275.206(4)–9 Cybersecurity policies and procedures of investment advisers.

(a) *Cybersecurity policies and procedures.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b6(4)), it is unlawful for any investment adviser registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) to provide investment advice to clients unless the adviser adopts and implements written policies and procedures that are reasonably designed to address the adviser's cybersecurity risks, including policies and procedures that:

(1) *Risk assessment.*

(i) Require periodic assessments of cybersecurity risks associated with adviser information systems and adviser information residing therein, including requiring the adviser to:

(A) Categorize and prioritize cybersecurity risks based on an inventory of the components of the adviser information systems and adviser information residing therein and the potential effect of a cybersecurity incident on the adviser; and

(B) Identify the adviser's service providers that receive, maintain, or process adviser information, or are otherwise permitted to access adviser information systems and any adviser information residing therein, and assess the cybersecurity risks associated with the adviser's use of these service providers.

(ii) Require written documentation of any risk assessments.

(2) *User security and access.* Require controls designed to minimize user-related risks and prevent unauthorized access to adviser information systems and adviser information residing therein, including:

(i) Requiring standards of behavior for individuals authorized to access adviser information systems and any adviser information residing therein, such as an acceptable use policy;

(ii) Identifying and authenticating individual users, including implementing authentication measures that require users to present a combination of two or more credentials for access verification;

(iii) Establishing procedures for the timely distribution, replacement, and revocation of passwords or methods of authentication;

(iv) Restricting access to specific adviser information systems or components thereof and adviser information residing therein solely to individuals requiring access to such systems and information as is necessary for them to perform their responsibilities and functions on behalf of the adviser; and

(v) Securing remote access technologies.

(3) *Information protection.*

(i) Require measures designed to monitor adviser information systems and protect adviser information from unauthorized access or use, based on a periodic assessment of the adviser information systems and adviser information that resides on the systems that takes into account:

(A) The sensitivity level and importance of adviser information to its business operations;

(B) Whether any adviser information is personal information;

(C) Where and how adviser information is accessed, stored and transmitted, including the monitoring of adviser information in transmission;

(D) Adviser information systems access controls and malware protection; and

(E) The potential effect a cybersecurity incident involving adviser information could have on the adviser and its clients, including the ability for the adviser to continue to provide investment advice.

(ii) Require oversight of service providers that receive, maintain, or process adviser information, or are otherwise permitted to access adviser information systems and any adviser information residing therein and through that oversight document that such service providers, pursuant to a written contract between the adviser and any such service provider, are required to implement and maintain appropriate measures, including the practices described in paragraphs (a)(1), (2), (3)(i), (4), and (5) of this section, that are designed to protect adviser information and adviser information systems.

(4) *Cybersecurity threat and vulnerability management.* Require measures to detect, mitigate, and remediate any cybersecurity threats and vulnerabilities with respect to adviser information systems and the adviser information residing therein;

(5) *Cybersecurity incident response and recovery.*

(i) Require measures to detect, respond to, and recover from a cybersecurity incident, including policies and procedures that are reasonably designed to ensure:

(A) Continued operations of the adviser;

(B) The protection of adviser information systems and the adviser information residing therein;

(C) External and internal cybersecurity incident information sharing and communications; and

(D) Reporting of significant cybersecurity incidents under § 275.204–6 (Rule 204–6).

(ii) Require written documentation of any cybersecurity incident, including the adviser's response to and recovery from such an incident.

(b) *Annual review.* An adviser must, at least annually:

(1) Review and assess the design and effectiveness of the cybersecurity policies and procedures required by paragraph (a) of this section, including whether they reflect changes in cybersecurity risk over the time period covered by the review; and

(2) Prepare a written report that, at a minimum, describes the review, the assessment, and any control tests performed, explains their results, documents any cybersecurity incident that occurred since the date of the last report, and discusses any material changes to the policies and procedures since the date of the last report.

(c) *Definitions.* For purposes of this section:

Adviser information means any electronic information related to the adviser's business, including personal information, received, maintained, created, or processed by the adviser.

Adviser information systems means the information resources owned or used by the adviser, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of adviser information to maintain or support the adviser's operations.

Cybersecurity incident means an unauthorized occurrence on or conducted through an adviser's information systems that jeopardizes the confidentiality, integrity, or availability of an adviser's information systems or any adviser information residing therein.

Cybersecurity risk means financial, operational, legal, reputational, and other consequences that could result from cybersecurity incidents, threats, and vulnerabilities.

Cybersecurity threat means any potential occurrence that may result in an unauthorized effort to adversely affect the confidentiality, integrity, or availability of an adviser's information systems or any adviser information residing therein.

Cybersecurity vulnerability means a vulnerability in an adviser's information systems, information system security procedures, or internal controls, including vulnerabilities in their design, configuration, maintenance, or implementation that, if exploited, could result in a cybersecurity incident.

Personal information means:

(i) Any information that can be used, alone or in conjunction with any other information, to identify an individual, such as name, date of birth, place of birth, telephone number, street address, mother's maiden name, Social Security number, driver's license number, electronic mail address, account number, account password, biometric records or other nonpublic authentication information; or

(ii) Any other non-public information regarding a client's account.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 23. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.,* Pub. L. 111203, 124 Stat. 1376.

■ 24. Amend Form ADV (referenced in § 279.1) by:

■ a. Adding Item 20 to Part 2A; and

■ b. Revising the instructions to the form, in the section entitled ''Form ADV: Glossary of Terms.''

The addition and revision read as follows:

Note: The text of Form ADV does not, and this amendment will not, appear in the *Code of Federal Regulations.*

FORM ADV (Paper Version)

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

PART 2: Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements

* * * * *

Item 20. Cybersecurity Risks and Incidents

A. *Risks.* Describe the *cybersecurity risks* that could materially affect the advisory services you offer. Describe how you assess, prioritize, and address cybersecurity risks created by the nature and scope of your business.

B. *Incidents.* Provide a description of any *cybersecurity incident* that that has occurred within the last two fiscal years that has significantly disrupted or degraded your ability to maintain

critical operations, or has led to the unauthorized access or use of *adviser information,* resulting in substantial harm to you or your clients. The description of each incident must include the following information to the extent known: The entity or entities affected; when the incident was discovered and whether it is ongoing; whether any data was stolen, altered or accessed or used for any other unauthorized purpose; the effect of the incident on the adviser's operations; and whether the adviser, or service provider, has remediated or is currently remediating the incident.

* * * * *

APPENDIX B: FORM ADV GLOSSARY OF TERMS

Adviser information means any electronic information related to the adviser's business, including personal information, received, maintained, created, or processed by the adviser.

Adviser information systems means the adviser information resources owned or used by the adviser, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of adviser information to maintain or support the adviser's operations.

Cybersecurity incident means an unauthorized occurrence on or conducted through an adviser's information systems that jeopardizes the confidentiality, integrity, or availability of an adviser's information systems or any adviser information residing therein.

Cybersecurity risk means financial, operational, legal, reputational, and other consequences that could result from cybersecurity incidents, threats, and vulnerabilities.

Cybersecurity threat means any potential occurrence that may result in an unauthorized effort to adversely affect the confidentiality, integrity, or availability of an adviser's information systems or any adviser information residing therein.

Cybersecurity vulnerability means a vulnerability in an adviser's information systems, information system security procedures, or internal controls, including vulnerabilities in their design, configuration, maintenance, or implementation that, if exploited, could result in a cybersecurity incident.

Personal information means:

(1) Any information that can be used, alone or in conjunction with any other information, to identify an individual, such as name, date of birth, place of birth, telephone number, street address, mother's maiden name, Social Security number, driver's license number, electronic mail address, account number, account password, biometric records or other nonpublic authentication information; or

(2) Any other non-public information regarding a client's account.

* * * * *

■ 25. Section 279.10 is added to read as follows:

§ 279.10 Form ADV–C, investment adviser cybersecurity incident reporting.

This form shall be filed pursuant to § 275.204–6 of this chapter (Rule 204–6) by investment advisers registered or required to register under section 203 of the Act (15 U.S.C. 80b–3).

By the Commission.

Dated: February 9, 2022.

Vanessa A. Countryman,

Secretary.

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

FORM ADV–C

INVESTMENT ADVISER CYBERSECURITY INCIDENT REPORT PURSUANT TO RULE 204–6 [17 CFR 275.206(4)–6]

You must submit this Form ADV–C if you are registered with the Commission as an investment adviser within 48 hours after having a reasonable basis to conclude that a *significant adviser cybersecurity incident* or a *significant fund cybersecurity incident* (collectively, ''*significant cybersecurity incident*'') has occurred or is occurring in accordance with rule 204–6 under the Investment Advisers Act of 1940.

Check the box that indicates what you would like to do (check all that apply):

○ Submit an initial report for a significant cybersecurity incident.

○ Submit an amended report for a significant cybersecurity incident.

○ Submit a final amended report for a significant cybersecurity incident.

(1) Investment Advisers Act SEC File Number: 801-

(2) Your full legal name of investment adviser (if you are a sole proprietor, state last, first, middle name):

(3) Name under which your primarily conduct your advisory business, if different from above:

(4) Address of principal place of business (number, street, city, state, zip code):

(5) Contact information for an individual with respect to the *significant cybersecurity incident* being reported: (Name, title, address if different from above, phone, email address)

(6) Adviser reporting a:

☐ *Significant adviser cybersecurity incident*

(a) If so, does the *significant adviser cybersecurity incident* involve any *private funds*?

☐ Yes

☐ No

(1) If yes, list the *private fund ID number(s)*

☐ *Significant fund cybersecurity incident*

(b) If so, list each investment company registered under the Investment Company Act of 1940 or company that has elected to be a business development company pursuant to section 54 of that Act involved and their SEC file number(s) (811 or 814 number) and the series ID number of the specific fund if more than one series under the SEC file number.

(7) Approximate date(s) the *significant cybersecurity incident* occurred, if known:

(8) Approximate date the *significant cybersecurity incident* was discovered:

(9) Is the *significant cybersecurity incident* ongoing?

☐ Yes

☐ No

(a) If not, approximate date the *significant cybersecurity incident* was resolved or any internal investigation pertaining to such incident was closed.

(10) Has law enforcement or a government agency (other than the Commission) been notified about the *significant cybersecurity incident*?

☐ Yes

☐ No

(a) If yes, which law enforcement or government agencies have been notified?

(11) Describe the nature and scope of the *significant cybersecurity incident,* including any effect on the relevant entity's critical operations:

(12) Describe the actions taken or planned to respond to and recover from the *significant cybersecurity* incident:

(13) Was any data was stolen, altered, or accessed or used for any other unauthorized purpose?

☐ Yes

☐ No

☐ Unknown

(a) If yes, describe the nature and scope of such information, including whether it was *adviser information* or *fund information.*

(14) Was any *personal information* lost, stolen, modified, deleted,

destroyed, or accessed without authorization as a result of the *significant cybersecurity incident*?

☐ Yes
☐ No
☐ Unknown

(a) If yes, describe the nature and scope of such information.

(b) If yes, has notification been provided to persons whose *personal information* was lost, stolen, damaged, or accessed without authorization?

☐ Yes
☐ No

(i) If not, are such notifications planned?

☐ Yes
☐ No

(15) Has disclosure about the *significant cybersecurity incident* been made to the adviser's clients and/or to investors in any investment company registered under the Investment Company Act of 1940 or company that has elected to be a business development company pursuant to section 54 of that Act, or *private funds* advised by the adviser involved?

☐ Yes
☐ No

(a) If yes, when was such disclosure made?

(b) If not, explain why such disclosure has not be made?

(16) Is the *significant cybersecurity incident* covered under a cybersecurity insurance policy maintained by you or any investment company registered under the Investment Company Act of 1940 or company that has elected to be a business development company pursuant to section 54 of that Act, or any private fund?

☐ Yes
☐ No
☐ Unknown

(a) If yes, has the insurance company issuing the cybersecurity insurance policy been contacted about the significant cybersecurity incident?

☐ Yes
☐ No

Definitions

For the purposes of this Form:

Adviser information and *adviser information systems* have the same meanings as in rule 206(4)–9 under the Investment Advisers Act of 1940.

Fund information, fund information systems, and *significant fund cybersecurity incident* have the same meaning as in rule 38a–2 under the Investment Company Act of 1940.

Private fund has the same meaning as in section 202(a)(29) of the Investment Advisers Act of 1940.

Personal information has the same meaning in rule 206(4)–9 under the Advisers Act of 1940 or rule 38a–2 under the Investment Company Act of 1940, as applicable.

Significant adviser cybersecurity incident has the meaning as in rule 204–6 under the Advisers Act of 1940.

[FR Doc. 2022–03145 Filed 3–8–22; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 46 March 9, 2022

Part V

Department of Veterans Affairs

48 CFR Parts 802, 807, 808, et al.
VA Acquisition Regulation: Acquisition Planning; Required Sources of Supplies and Services; Market Research; and Small Business Programs; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 802, 807, 808, 810, 813, 819, 832, 852, and 853

RIN 2900–AR06

VA Acquisition Regulation: Acquisition Planning; Required Sources of Supplies and Services; Market Research; and Small Business Programs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. This rulemaking revises coverage concerning Acquisition Planning, Required Sources of Supplies and Services, Market Research, and Small Business Programs, as well as affected parts to include Definitions of Words and Terms, Simplified Acquisition Procedures, Contract Financing, Solicitation Provisions and Contract Clauses, and Forms.

DATES: Comments must be received on or before May 9, 2022 to be considered in the formulation of the final rule.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments received will be available at regulations.gov for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 810 Vermont Avenue NW, Washington, DC 20420, (202) 714–8560. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authorities that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance. These changes seek to streamline and align the VAAR with the FAR, remove outdated and duplicative requirements, and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency procedural guidance. VA will rewrite certain parts of the VAAR and draft new internal VAAM parts, and as VAAR parts are rewritten, will publish them in the **Federal Register**. VA will combine related topics, as appropriate. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. Therefore, the VAAM will not be finalized until corresponding VAAR parts are finalized, and the corresponding VAAM parts or sections related to this rule is not yet available online.

VAAR Part 802—Definition of Words and Terms

We propose to revise the authority citation by removing the dash in 48 CFR 1.301–1.305 and adding the word, ''through.''

In 802.101 we propose adding four new definitions and revising three existing definitions as discussed below. We propose adding the following definitions:

Public Law (Pub. L. 109–461) means the Veterans Benefits, Health Care and Information Technology Act of 2006, as codified in 38 U.S.C. 8127 and 8128, which authorizes the Veterans First Contracting Program.

SDVOSB/VOSB when used as an initialism means a service-disabled veteran-owned small business (SDVOSB) and/or veteran-owned small business (VOSB) that has been found by VA eligible to participate in the Veterans First Contracting Program implemented at subpart 819.70 and listed in the Vendor Information Pages. The term is synonymous with VA or VIP verified small business concerns owned and controlled by Veterans.

VA Rule of Two means the determination process mandated in 38 U.S.C. 8127(d)(1) whereby a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by Veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. For purposes of this VA specific rule, a service-disabled veteran-owned small business (SDVOSB) or a veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), (f) and VAAR 819.7003 and be listed as verified in the Vendor Information Pages (VIP) database maintained by the VA Office of Small and Disadvantaged Business Utilization (OSDBU), Center for Verification and Evaluation (CVE). It is distinguished from the FAR part 19 ''Rule of Two'' contracting determination requirement for general small business set-asides.

Veterans First Contracting Program (VFCP) means the program authorized by Public Law 109–461 (38 U.S.C. 8127 and 8128), as implemented in subpart 819.70. This program applies to all VA contracts (see FAR 2.101 for the definition of contracts) including orders against Blanket Purchase Agreements (BPAs), Basic Ordering Agreements (BOAs), and orders against the Federal

Supply Schedules (FSS), unless otherwise excluded by law.

In 802.101 we propose revising the following three definitions that already exist in the VAAR:

Service-disabled veteran-owned small business (SDVOSB)—the definition remains substantially the same as a service-disabled veteran-owned small business concern defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. In addition, some SDVOSBs listed in the VIP database may be owned and controlled by a surviving spouse. See definition of surviving spouse in 802.101.

Vendor Information Pages (VIP) database—this expands the definition currently in the VAAR, indicating that the VA Office of Small and Disadvantaged Business Utilization (OSDBU) office, through its Center for Verification and Evaluation (CVE), is responsible for maintaining the SDVOSB/VOSB list, and provides an updated website address for the database: *https://www.vetbiz.va.gov/vip/*. This site's database lists businesses that VA CVE has verified and determined eligible for the Veterans First Contracting Program.

Veteran-owned small business (VOSB)—the definition remains substantially the same as a v*eteran-owned small business concern* defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. SDVOSBs, including businesses whose SDVOSB status derive from ownership and control by a surviving spouse, are also considered VOSB, as long as they are listed as eligible in VIP.

VAAR Part 807—Acquisition Planning

We propose removing the entirety of part 807—Acquisition Planning, including subpart 807.1—Acquisition Plans, and 807.103, Agency-head responsibilities. This identifies internal procedures of VA that do not have a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)). The information in this section will be moved to the VAAM.

We propose removing subpart 807.3—Contractor Versus Government Performance, and 807.300, Scope of subpart, and 807.304–77, Right of first refusal. This addresses contracting for commercial services under OMB A–76 and VA's cost comparison process. It is proposed for removal because the material is outdated. The clause was used in conjunction with OMB Circular A–76, Performance of Commercial Activities or with VA's cost comparison process. The VA Directive that implemented VA's cost comparison process, VA Directive 7100, Competitive Sourcing, has been rescinded, which renders the guidance in this subpart and the clause obsolete. VA does not currently have policy guidance in place that supplements the OMB Circular A–76. Current FAR coverage is sufficient pending any changes to the program via the FAR or OMB directives.

VAAR Part 808—Required Sources of Supplies and Services

We propose revising the authority citations pertaining to part 808 to standardize how it is referenced in other VAAR parts. The authority, which now reads ''38 U.S.C. 8127 and 8128'' would be changed to read: ''38 U.S.C. 8127–8128.''

We propose removing reference to paragraph (d) in the 40 U.S.C. 121 citation because it is unnecessary; only paragraph (c) will be reflected. This comports with the FAR. 40 U.S.C. 121(c) provides that the Administrator of the General Services Administration may prescribe regulations to carry out responsibilities under the Federal Property and Administrative Services subtitle of Title 40, and, additionally, that the head of each executive agency shall issue orders and directives that the agency head considers necessary to carry out the prescribed regulations issued by the Administrator. The VAAR, which supplements and implements the FAR, and its internal operational procedures, is a part of the orders and directives as authorized under this authority.

We propose including a reference to Title 41 U.S.C. 1121(c)(3), which speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

And finally, we also propose revising the part 808 authorities to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer. We are removing the dash in 48 CFR 1.301–1.304 and adding the word ''through.'' Any other proposed changes to authorities are shown under the individual parts as described in the preamble.

We propose adding 808.000, Scope of part, to clarify that the part deals with prioritizing sources of supplies and services for use by the Government based on unique VA statutory programs, as well as use of the General Services Administration (GSA) Federal Supply Schedules program including the GSA delegated VA Federal Supply Schedule program.

We propose adding 808.001, General, with no text as a header, and section 808.001–70, Definitions, to provide a definition for the Veterans Affairs Federal Supply Schedule (''VA FSS''). The definition of VA Federal Supply Schedule was added because ''VA FSS'' is used throughout part 808.

We propose revising 808.002 to implement the requirements of the Department of Veterans Affairs Contracting Preference Consistency Act of 2020 (the Act), Pubic Law 116–155, amending 38 U.S.C. 8127, which became effective on August 8, 2020. In summary, the legislation requires a contracting officer of the Department to procure covered products and services on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), from a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled, as required by 41 U.S.C. chapter 85 and associated regulations prescribed under that chapter. This is referred to as the AbilityOne program. This requirement shall not apply in the case of a covered product or service for which a contract was awarded to an SDVOSB/VOSB under the authority of 38 U.S.C. 8127(d)(1) using restricted competition after December 22, 2006 and in effect on the day before the enactment of the Act, *i.e.,* August 7, 2020. In such case, these covered products and services shall continue under VA's unique SDVOSB/VOSB set-aside program using restricted competition as provided in VAAR 819.7006 and 819.7007. When these SDVOSB/VOSB contracts are terminated or expire, the Secretary, as delegated to the Head of the Contracting Activity or designee, is required to make a determination that the VA Rule of Two cannot be met before the requirement can be procured under the AbilityOne program. The legislation provides a definition of covered products and services and an exception which the VA implemented through Class Deviation from VA Acquisition Regulation Part 808, Required Sources of Supplies and Services, approved on July 20, 2021.

We propose revising VAAR 808.002 to comport with changes to FAR 8.002 based on FAC 2005–72, December 31, 2013, effective January 30, 2014 and reflects VA's implementation of FAR

8.002. The FAR final rule amended FAR part 8 to clarify that use of General Services Administration (GSA) Federal Supply Schedules (FSS) is not mandatory.

With this proposed rule, the VA is amending VAAR section 808.002 to set forth conforming amendments to its acquisition regulation as the result of legislation which requires contracting officers to give priority in the award of covered products and services under the AbilityOne program along with considering the requirements of the Veterans First Contracting Program set forth in subpart 819.70 as further described below. VA is also implementing related technical amendments as set forth below including adding citation references back to 808.002 in VAAR part 819.

In general, we propose amending section 808.002, by adding paragraph (a) and (b) and removing paragraph (c). Paragraph (a) would state that contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed in descending order of priority and aligns with FAR 8.002. Under (a)(1) and the underlying subparagraphs, the priorities for Supplies are established as—

- VA inventories including the VA supply stock program and VA excess.
- Excess from other agencies.
- Federal Prison Industries, Inc.
- Supplies that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7).
- Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101–26.3), the Defense Logistics Agency (see 41 CFR 101–26.6), the Department of Veterans Affairs (see 41 CFR 101–26.704), and military inventory control points.

Under paragraph (a)(2), the priority is established for Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7).

In 808.002, Priorities for use of mandatory Government sources, in order to implement the new Act, we added paragraphs (a)(1)(iv) and (a)(2) to reflect the new legislative mandate concerning products and services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, required to be procured through the AbilityOne Program, to:

- Add definitions for a ''covered product'' or ''covered service'' which means a product or service that is included on the Procurement List prescribed under FAR 8.002 and was included on such procurement list on or before December 22, 2006, or is a product or service that is a replacement for a product or service and that essentially meets the same requirement as the product or service being replaced; and the contracting officer determines such product or service meets the quality standards and delivery schedule requirements of VA.
- Establish AbilityOne as a priority mandatory Government source within certain limitations applicable to the Veterans First Contracting Program and to require that contracting officers shall procure a covered product or service that is on the Procurement List through the AbilityOne Program as set forth in VAAR 808.002(a)(1)(iv) and (a)(2), respectively, with one exception.
- Identify the exception for covered products or services previously awarded to SDVOSBs/VOSBs. Specifically, if a product or service contract action was previously awarded under 38 U.S.C. 8127 to a VIP-listed SDVOSB or VOSB after December 22, 2006 and in effect on the day before the enactment of the Act, *i.e.,* August 7, 2020, the requirement shall continue to be procured as a SDVOSB/VOSB set-aside provided the contracting officer made a VA Rule of Two determination in accordance with 38 U.S.C. 8127(d)(1) and subpart 819.70.
- Restore AbilityOne as a priority mandatory source for covered products and services on the Procurement List on certain previously awarded SDVOSB/VOSB contracts if the VA Rule of Two is not met. Specifically, section 808.002 would require that, in the event the conditions of the exception are satisfied at the termination or expiration of a contract for covered products or services previously awarded under 38 U.S.C. 8127(d)(1) to SDVOSBs or VOSBs, AbilityOne remains a priority mandatory Government source. This requires a determination, which the Secretary delegates to the Head of the Contracting Activity or designee, that there is not a reasonable expectation that two or more SDVOSBs/VOSBs will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States.

We also propose removing 808.002, paragraph (c), Eligible beneficiaries, because internal procedures are more appropriately located in the VAAM. We propose adding paragraph (b), Unusual and compelling urgency, to comport with the FAR. The contracting officer may use a source other than those listed in 808.002, paragraph (a) when the need for supplies or services is of an unusual and compelling urgency. We added in a reference to FAR 6.302–2, 8.405–6, 13.106–1 and VAAR part 806 for justification requirements.

We propose adding 808.004, Use of other sources, and 808.004–70, Use of other priority sources. This provides that contracting officers shall award contracts, Blanket Purchase Agreements (BPAs), and orders against VA and GSA Federal Supply Schedules (FSS), providing priority in the awarding of such contracts, agreements, and orders to VIP-listed SDVOSBs first, then VOSBs. This section also sets policy for VA strategic sourcing priorities and application of the VA Rule of Two. To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (*e.g.,* prime-vendor, national contracts, VA FSS). If these strategic sourcing contracts were subject to the VA Rule of Two, they may be determined mandatory by the head of the contracting activity. Contracting officers shall consider these priority contract vehicles before using other existing contract vehicles. This comports with FAR 8.002 which encourages agencies to consider satisfying requirements from or through non-mandatory sources. VA balances this requirement carefully with the consideration of VA-specific strategic sourcing vehicles that permit VA to more effectively and efficiently meet its mission for those FSC groups delegated by GSA to VA—FSC Group 65 and 66 for supplies, and FSC Group 621, for medical services, in addition to those other strategic sourcing vehicles supporting this core VA mission.

In subpart 808.4, Federal Supply Schedules:

We propose revising 808.402, General, to identify the GSA delegation to VA implementing FAR 8.402(a), whereby GSA has delegated authority to the VA to procure medical equipment, supplies, services, and pharmaceuticals under the VA Federal Supply Schedule (FSS) program. The VA FSS program includes medical supplies in Federal Supply Classification (FSC) Groups 65 and 66 and services in FSC 621 for Professional and Allied Healthcare Staffing Services and Medical Laboratory Testing and Analysis Services. We propose to remove outdated FSC groups that are no longer delegated.

We propose adding 808.404, Use of Federal Supply Schedules, and 808.404–70, Use of Federal Supply Schedules—the Veterans First

Contracting Program. Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for Veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70. Specifically, the contracting officer must consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. These priorities are followed by preferences for other small businesses in accordance with 819.7005. This also supplements FAR 8.404 and provides that if contracting officers are unable to satisfy requirements for supplies and services from the mandatory sources in 808.002 and 808.004–70, they may consider commercial sources in the open market (see FAR 8.004(b)) if an open market acquisition is most appropriate (see FAR 8.004) and a VA Rule of Two determination is made (see subpart 819.70). This section also requires that when the servicing agency will award contracts under an interagency agreement on behalf of the VA, the contracting officer shall ensure the interagency acquisition complies with FAR subpart 17.5 and VAAR subpart 817.5, and includes terms requiring compliance with the VA Rule of Two, to the maximum extent feasible—see VAAR subpart 817.5.

We propose removing 808.405–2, Ordering procedure for services requiring a statement of work as the language is outdated.

We propose adding 808.405, Ordering procedures for Federal Supply Schedules, as a section heading with no text, and 808.405–70, Set-aside procedures for VA and GSA Federal Supply Schedules. This requires contracting officers to use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services under this subpart. This includes posting requirements and the required use of evaluation preferences for SDVOSBs/VOSBs when a set-aside is not pursued in accordance with the market research and documentation requirements set forth.

We propose adding 808.405–570, Small business set-asides and preferences—Veterans First Contracting Program clauses. This includes the prescription that requires the contracting officer, when setting aside an order pursuant to 808.405–70 (a), the applicable clause prescribed in 819.7011 for SDVOSB/VOSB set-asides shall be used. It also prescribes in paragraph (b) that when an SDVOSB/VOSB set-aside is not feasible, the ordering activity shall use the clause at 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, for task orders, delivery orders or BPAs using evaluation preferences other than price. And in paragraph (c), it requires the ordering activity to insert the clause at 852.208–71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders or BPAs, in request for quotes and resulting orders that include clause 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

In subpart 808.6, Acquisition from Federal Prison Industries, Inc., we propose revising the title to remove ''(FPI)'' to comport with the title in the FAR.

In 808.603, Purchase priorities, we add language that contracting officers may purchase supplies and services produced or provided by Federal Prison Industries (FPI) from eligible SDVOSBs and VOSBs, in accordance with procedures set forth in subpart 819.70, without seeking a waiver from FPI. We are correcting the previous title that had been codified at 808.603 from ''Purchasing priorities'' to ''Purchase priorities'' to align with the FAR.

We propose to remove and reserve 808.8, Acquisition of Printing and Related Supplies and the underlying section 808.802, Policy. This is internal policy that will be removed to the VAAM.

VAAR Part 810—Market Research

We propose revising the authority citations pertaining to part 810 to standardize how it is referenced in other VAAR parts. The authority, which now reads ''38 U.S.C. 8127 and 8128,'' would be changed to read: ''38 U.S.C. 8127–8128.''

We propose removing reference to paragraph (d) in the 40 U.S.C. 121 citation because it is unnecessary; only paragraph (c) will be reflected. This comports with the FAR. 40 U.S.C. 121(c) provides that the Administrator of the General Services Administration may prescribe regulations to carry out responsibilities under the Federal Property and Administrative Services subtitle of Title 40, and, additionally, that the head of each executive agency shall issue orders and directives that the agency head considers necessary to carry out the prescribed regulations issued by the Administrator. The VAAR, which supplements and implements the FAR, and its internal operational procedures, is a part of the orders and directives as authorized under this authority.

We propose including a reference to Title 41 U.S.C. 1121(c)(3), which speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

And finally, we also propose revising part 810 authorities to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer. We are removing the dash in 48 CFR 1.301–1.304 and adding the word ''through.'' Any other proposed changes to authorities are shown under the individual parts as described in the preamble.

We propose revising part 810, Market Research, to add 810.000, Scope of part, which provides that the Veterans First Contracting Program in subpart 819.70 applies to contract actions under this part and takes precedence over other small business programs referenced in FAR part 10 and FAR part 19.

We propose revising, redesignating, and renumbering the current 810.001, Market research policy, and retitling it so it now reads: 810.001–70, Market research policy—use of VA Vendor Information Pages. This corrects the error during original codification in the VAAR when published originally as a proposed and final rule and which currently is reflected in the eCFR as ''810.001, Market research policy,'' and which then should have reflected: 810.001, Policy. This provides an updated Vendor Information Pages (VIP) website address and require contracting officers to review the VIP database as mandated by VAAR subpart 819.70, the Veterans First Contracting Program. It also requires more specifically that contracting officers search the VIP database by applicable North American Industry Classification System (NAICS) codes to determine whether two or more verified service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs), in the appropriate NAICS code, are listed as verified in the VIP database. The contracting officer is required to determine, among other things as the requirement dictates, whether VIP-listed SDVOSBs or VOSBs identified as a result of market research are capable of performing the work, are likely to submit an offer/quote, and whether award can be made at a fair and reasonable price that offers best value to the Government. The contracting officer must use the market research for acquisition planning purposes, and as

set forth in VAAR subpart 819.70, conduct a VA Rule of Two determination in accordance with the contracting order of priority (see 819.7006 and 819.7007)

We also propose removing 810.002, Market research procedures. This identifies internal procedures of VA that do not have a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)). The information in this section will be moved to the VAAM.

VAAR Part 813—Simplified Acquisition Procedures

We propose revising the title of 813.003–70, Policy, to ''General policy'' to reflect it is supplementing the FAR at 813.003 and to comport with standard FAR conventions. We also propose adding a sentence in paragraph (a) that provides a pointer back to 808.002 for VA policy regarding mandatory Government sources. In the following paragraphs we propose updating references to 819 sections as a result of the renumbering of VAAR part 819 sections as follows:

In paragraph (c)(1) references to 819.7005 and 819.7006 are revised to 819.7006 and 819.7007, respectively, and a reference to 819.7009 is revised to 819.7011.

In paragraph (c)(2) a reference to 815.304 is revised to 815.304–70 to reflect a change at that section in VAAR part 815.

And in paragraph (d), a reference pointer to 819.7004 and 819.7011 are added to the end of the sentence.

In subpart 813.1, Procedures, we add references to new relevant VAAR part 806 sections to section 813.106–70, Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program. In paragraph (b), we add a reference to 806.302–570(a) and (b) pertaining to justification for procurements under the simplified acquisition threshold, and in paragraph (c), we add a reference to 806.302–570(a) and (c), above the simplified acquisition threshold.

VAAR Part 819—Small Business Programs

We propose adding authority citations for 15 U.S.C. 631 *et seq.* to denote the authority for small business programs at Federal agencies, as well as moving 15 U.S.C. 637(d)(4)(E) earlier in the list of authorities to reflect authority for an agency to develop incentives for increasing subcontracting plan opportunities which is under the auspices of the Office of Small and Disadvantaged Business Utilization (OSDBU).

We propose revising the authority citations pertaining to part 819 to standardize how it is referenced in other VAAR parts. The authority, which now reads ''38 U.S.C. 8127 and 8128,'' would be changed to read: ''38 U.S.C. 8127–8128.''

We propose removing reference to paragraph (d) in the 40 U.S.C. 121 citation because it is unnecessary; only paragraph (c) will be reflected.

We propose revising the authority citations pertaining to part 819 to include a reference to 41 U.S.C. 1121(c)(3), which speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose revising part 819 authorities to add 41 U.S.C 1303, which reflects additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA.

We also propose adding 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer. Any other proposed changes to authorities are shown under the individual parts as described in the preamble. We are removing the dash in 48 CFR 1.301–1.304 and adding the word ''through.''

We propose adding 819.000, Scope of part, indicating that 819 supplements FAR 19 and implements provisions of title 38 U.S.C. 8127 and 8128, as well as Executive Order 13360 and the Small Business Act (15 U.S.C. 631 *et seq.*) as applied to VA. This part also covers goals, priorities, and preferences for using SDVOSBs, VOSBs, and SBs, as well as subcontracting compliance.

In subpart 819.2, Policies, the text is revised and updated to align more appropriately with FAR subpart 19.2 and to expand on VA policy regarding the Veterans First Contracting Program. New text in section 819.201 describes VA's small business policy consistent with the VA's legislation and its legislative history and is now aligned with the most recent FAR paragraph lettering/numbering. In the proposed revisions to 819.201, General policy, the realigned section contains revisions as follows: Paragraph (a) provides a policy statement regarding priority for veteran owned small businesses and establishment of goals consistent with VA's legislative mandate and key points in the Supreme Court Kingdomware decision regarding goals; paragraph (c) assigns OSDBU concurrent responsibility for the Veterans First Contracting Program, in addition to those legislative mandates in FAR; and paragraph (d) covers the appointment of small business specialists by the HCA in coordination with OSDBU.

We propose revising 819.202, Specific policies to align with the FAR coverage for OSDBU recommendation on set-asides. It implements the FAR section and expands coverage to the Veterans First Contracting Program in subpart 819.70. The section also covers, in very broad terms, the VA Form 2268, Small Business Program and Contract Bundling Review process.

We propose deleting 819.202–1, Encouraging small business participation in acquisitions. Existing contract financing language here is removed from the VAAR as redundant to the FAR, and certain internal procedural guidance is included in VAAM subpart 832.4. The current VAAR text provides that payments of less than 30 days are allowed, but the contracting officer and the local fiscal officer must agree on the negotiated payment terms before awarding the contract. Note: This requirement may have been overtaken by the accelerated payments provisions recently added to FAR part 32.

We propose removing coverage in sections 819.202–1, 819.202–5, 819.202–70, and 819.202–71. Current VAAR coverage under these sections are no longer necessary or were moved to other sections. Internal procedures are removed and moved to the VAAM.

In 819.202–72, Order of precedence, the section is removed, and the language moved to a new section 819.203–70, Priority for SDVOSB/VOSB contracting preferences, to supplement more appropriately FAR 19.203.

We propose adding 819.203, Relationship among small business programs, as a section header with no text.

We proposed adding 819.203–70, Priority for SDVOSB/VOSB contracting preferences. This proposed supplement to FAR 19.203 cites the legislative authority for VA to establish special acquisition methods and priorities which shall be considered by VA contracting officers before other priorities and preferences in FAR 19.203. It also covers legislative requirements in 38 U.S.C. 8128 to provide SDVOSB/VOSB preference

under any other small business program.

In subpart 819.3, Determination of Small Business Status for Small Business Programs, we propose revising the title to comport with the updated FAR title so that it reads: Determination of Small Business Size and Status for Small Business Programs.

We propose revising existing section at 819.307, SDVOSB/VOSB Small Business Status Protests, to change the title to comport with the FAR so that it reads: ''Protesting a firm's status as a service-disabled veteran-owned small business concern.'' There is no text under this section heading. The text previously under this section is moved to a new 819.307–70 as described below.

We propose adding 819.307–70, SDVOSB/VOSB status protests, to reflect that it provides VA policy supplementing FAR 19.307. Paragraph (a) from the existing CFR is modified as a single paragraph. The other paragraphs in the previous text at 819.307 are removed. The proposed modified section reiterates a FAR requirement that protests, challenging whether an SDVOSB/VOSB is a ''small business'' for the purposes of any Federal program, are subject to FAR subpart 19.3 and must be filed in accordance with that part. It also implements legislative requirements contained in section 1832 of the National Defense Authorization Act for FY 2017, Public Law 114–328, to place responsibility for all SDVOSB/VOSB status protests with the SBA Office of Hearings and Appeals, including those related to VIP inclusion.

We propose revising subpart 819.5, to change the title from ''Set-Asides for Small Businesses'' to ''Small Business Total Set-Asides, Partial Set-Asides, and Reserves'' to comport with an updated title in the FAR.

We propose adding 819.501, General, as a section header with no text.

We propose adding 819.501–70, General principles for setting aside VA acquisitions. A new section is created as a supplement to FAR 19.501, General, providing small business set aside principles and priorities that apply to VA set asides. The FAR provides a preference to the socioeconomic programs in FAR 19.202 before small business set-asides but does not provide coverage for VOSB set-asides. Nor does it require verification of SDVOSBs for set-asides covered under FAR subpart 19.14. Moreover, the SDVOSB program in FAR is discretionary and not mandatory as it is for VA. The new section covers VA priorities and preferences for SDVOSBs/VOSBs, both above and below the simplified acquisition threshold in accordance with subpart 819.70. These priorities also apply to all VA acquisitions under this subpart including orders and BPAs under multiple award contracts, GSA Federal Supply Schedule contracts and Multi-Agency Contracts (MACs) awarded by another agency. It also provides that when a procurement requirement is not set aside for SDVOSBs/VOSBs in accordance with subpart 819.70, the contracting officer shall consider using evaluation preferences, as set forth in 808.405–70 or 815.304–70. It also adds coverage indicating that contracting officers may provide in the solicitation for the use of tiered evaluations. Note: Since other Federal agencies, including GSA, are not subject to Public Law 109–461, and/or ownership and control verification, the section reiterates that the requirements in this section apply to all VA competitive acquisitions under this subpart, including orders and BPAs under multiple award contracts, GSA Federal Supply Schedule contracts and Multi-Agency Contracts (MACs) awarded by another agency. It also provides that a set-aside restricted to SDVOSBs/VOSBs pursuant to VAAR subpart 819.70 satisfies competition requirements in FAR part 6, as well as fair opportunity requirements for orders under multiple-award contracts (see FAR 16.505(b)(2)(i)(F)).

Under section 819.502, Setting aside acquisitions, we propose adding an underlying section 819.502–1, Requirements for setting aside acquisitions. This new section is created to supplement FAR 19.502–1(b) with the VA policy for mandatory Government sources. The FAR section provides that small business set-asides do not apply to purchases from required sources under part 8 (*e.g.,* Committee for Purchase From People Who are Blind or Severely Disabled). As a result of Public Law 116–155, the new VAAR section refers contracting officers to VAAR 808.002 for the VA policy regarding priorities for use of SDVOSBs/VOSBs and mandatory Government sources as VA has different requirements with respect to FAR 8.002 based on Public Law 116–155.

In 819.502–2, Total small business set-asides, we propose adding new coverage at 819.502–2(a) to indicate that VA contracting officers, rather than withdrawing an SDVOSB/VOSB set-aside and resoliciting, may follow tiered evaluation procedures, as provided in the March 22, 2018 VA Class Deviation from Federal Acquisition Regulation 19.502–2, Total small business set-asides.

We propose removing 819.502–3, Partial set-asides. Coverage is no longer required because the FAR adequately covers this topic.

We propose adding 819.507, Solicitation provisions and contract clauses, as a new section header with no text.

We propose adding 819.507–70, Additional VA solicitation provisions and contract clauses. This proposed new section refers contracting officers to VAAR subpart 808.4 (Federal Supply Schedules); VAAR subpart 815.3 (Source Selection); and VAAR subpart 819.70 (Veterans First Contracting Program) for VA specific requirements and clauses applicable to VA veteran-owned and small business contracting programs.

We propose removing subpart 819.6, Certificates of Competency and Determinations of Responsibility. The FAR-redundant language is removed and information that is internal and procedural in nature is moved to the VAAM.

In subpart 819.7—The Small Business Subcontracting Program, we propose removing 819.704, Subcontracting plan requirements; the language will be moved to a new section, retitled and revised as discussed below.

We propose adding 819.704–70, VA subcontracting plan requirements, as a supplement to the FAR. This language contains some previous coverage at 819.704. This proposed new language directs contracting officers to ensure any subcontracting plans submitted by offerors include goals for SDVOSBs and VOSBs that are commensurate with the annual VA SDVOSB and VOSB subcontracting goals, rather than the prime contracting goals as previously included in this section. The proposed new language cautions contractors that only firms registered and verified through the VIP data base will count towards their SDVOSB/VOSB subcontracting goals; and that subcontracting plan achievement reports will be reviewed to ensure the subcontract was awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in subpart 819.70.

Section 819.704–70, paragraph (b) requires goals to be expressed as a percentage of total dollars to be subcontracted unless otherwise stated in the solicitation. Paragraph (c) provides that if an offeror proposes to use an SDVOSB/VOSB subcontractor for the purpose of receiving SDVOSB/VOSB evaluation factors credit pursuant to 808.405–70 or 815.304–70, the contracting officer shall ensure that the offeror, if awarded the contract, uses the

proposed subcontractor or another SDVOSB/VOSB for that subcontract or for work of similar value, in accordance with clause 852.208–70 or 852.215–71, Evaluation Factor Commitments.

Paragraph (d) provides that pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB or VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business.

We propose removing 819.705, Appeal of contracting officer decisions. Relevant subcontracting-related language is incorporated into 819.704–70. Unrelated language regarding set-aside decisions is removed because it is not applicable to subcontracting.

We propose renumbering 819.709, Contract clause, as 819.708, Contract clauses, to align with FAR clause coverage on small business subcontracting plans. It requires the contracting officer to insert VAAR clause 852.219–9, Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include FAR clause 52.219–9, Small Business Subcontracting Plan. In addition, the section refers readers to new subpart 819.72 for other required provisions and clauses.

In subpart 819.8, Contracting With the Small Business Administration (The 8(a) Program), we propose revising the title to correct a minor capitalization error to comport with the FAR so that it reads: ''Contracting With the Small Business Administration (the 8(a) Program).

We propose revising 819.800, General. Paragraphs (a), (b), and (c) are deleted as obsolete. New paragraph (e) is created to refer to the SBA/VA Partnership Agreement (PA), which delegates contracting execution authority to VA contracting officers. The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. The actual PA and related basic procedures will be addressed in VAAM subpart M819.8. The PA is now permanent (as opposed to a yearly agreement) but is subject to cancellation by SBA. The new language provides that contracting officers must follow the alternate procedures in the Partnership Agreement and this subpart, as applicable, to award an 8(a) contract and that in the event no Partnership Agreement is in effect, the procedures in FAR subpart 19.8 will be followed.

We propose adding 819.811, Preparing the contracts, as a section header with no text.

We propose adding 819.811–370, VA/SBA Partnership Agreement and contract clauses, for direct 8(a) awards. The new language prescribes clauses 852.219–18, Notification of Competition Limited to Eligible 8(a) Participants, and 852.219–71, Notification of Section 8(a) Direct Award.

In subpart 819.70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program, we propose revising the title of the subpart to reflect the well-known and public name of the program: The VA Veterans First Contracting Program, typically referred to as the Veterans First Contracting Program.

We propose revising 819.7001, General, to provide background and legislative authority for the Veterans First Contracting Program consistent with legislative requirements in 38 U.S.C. 8127 and 8128 and the June 16, 2016 decision of the U.S. Supreme Court in *Kingdomware Technologies, Inc.* v. *United States* (No. 14–916) (136 S.Ct. 1969 (2016)). In the *Kingdomware* decision dated June 16, 2016, the Supreme Court held that 38 U.S.C. 8127(d) applies to all competitively awarded contracts, including orders placed against Federal Supply Schedule (FSS) contracts. The Court also held the Rule of Two contracting procedures in section 8127(d) are not limited to those contracts necessary to fulfill the Secretary's goals. The ''VA Rule of Two'' as VA's implementing policy defined in VAAR 802.101 via Class Deviation issued on July 25, 2016 (and subsequent minor amendments), after the *Kingdomware* case, refers to the legislative requirement in § 8127(d) that ''a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.'' Paragraph (b) is revised to state that eligible SDVOSBs qualify for VOSB preferences under VAAR subpart 819.70. Paragraphs (c) and (d) provide the legislative basis for VA contracting officers to make awards to VIP-listed SDVOSBs/VOSBs using set-asides, other than full and open competition (sole source), as well as to provide SDVOSBs/VOSBs priority in the awarding of contracts and subcontracts through the use of evaluation preferences. Paragraph (d) provides that while contracting officers shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans as provided in 819.7006 and 819.7007, when appropriate, the contracting officer may also use other SDVOSB/VOSB preferences in this subpart, including sole source awards. Paragraph (e) provides that a contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that a firm must be VIP-listed. Additional information is provided as to who is considered similarly situated. Paragraph (f) states that the attainment of goals or the use of interagency vehicles or Governmentwide contract vehicles (*i.e.,* Federal Supply Schedules (FSS)) does not relieve the contracting officer from using SDVOSB/VOSB set-asides and other preferences as provided in subpart 819.70. It also requires that if the VA enters into a contract, agreement, or other arrangement with any Governmental entity to acquire goods or services, the entity acting on behalf of the VA through such an interagency acquisition or other agreement will comply, to the maximum extent feasible, with the provisions of the Veterans First Contracting Program as set forth in this subpart. Paragraph (g) requires contracting officers to ensure awards are made using the VA hierarchy of SDVOSB/VOSB preferences in this subpart. Specifically, the contracting officer will consider preferences for eligible SDVOSBs first, then preferences for other eligible VOSBs. And paragraph (h) would provide that when an offer of an SDVOSB/VOSB prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the contracting officer must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.

We propose revising 819.7002, Applicability, to reiterate that this subpart applies to VA contracting activities and to all contract actions. In addition, this subpart applies to VA contractors and to any government entity that has a contract, memorandum of understanding, agreement, or other arrangement with VA to acquire goods

and services for VA in accordance with 817.502. It includes a reference to VAAR 808.002 to ensure the public and VA contracting officers understands to refer to 808.002 for applicability and VA policy regarding priorities for use of mandatory Government sources.

We propose revising 819.7003, Eligibility. Most of the original structure and language regarding eligibility of SDVOSBs and VOSBs is retained but updated to reflect new legislative requirements regarding eligibility under the program and alignment with SBA regulations, including the applicability of limitations on subcontracting and the transfer of eligibility challenges to the SBA as a result of Public Law 114–328, enacted December 23, 2016 and subsequent legislative and regulatory changes. For example, new language has been added to clarify joint venture eligibility as a result of recent SBA regulatory changes, and a new paragraph is added to address the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020. In addition, a new paragraph is added consistent with a 2012 amendment to Public Law 109–461, stating that willful and intentional misrepresentation of SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years.

We propose adding 819.7004, Limitations on subcontracting compliance requirements. This new section is created to address the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020. Specifically, contracting officers may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirements described in the solicitation and required under the resultant contract. The section also deals with legislative mandates that require OSDBU and Chief Acquisition Officer (CAO) to monitor and refer potential violations to the OIG for potential criminal violations. Note: As a result of this new section, the numbering in subsequent sections is changed to reflect the corresponding numerical sequence.

We propose renumbering the existing 819.7004, Contracting order of priority, to 819.7005. Most of the original language regarding eligibility of SDVOSBs and VOSBs is removed, and the text updated to reflect the contracting order of priority established in 38 U.S.C. 8127(h). New simpler language is added to track the order of preference set forth in 38 U.S.C. 8127(h). As a result of this new section, the numbering in subsequent sections is changed to reflect the corresponding numerical sequence.

We propose revising 819.7005, Service-disabled veteran-owned small business set-aside procedures, renumbering it as 819.7006, and retitling it as ''VA service-disabled veteran-owned small business set-aside procedures.'' Most of the existing language is retained with a few updates consistent with legislative requirements. The section provides that the contracting officer must consider SDVOSB set-asides before considering VOSB set-asides and the conditions to be met to make this determination. New language is added to reflect that the set-asides are only applicable above the micro-purchase threshold.

We propose revising 819.7006, Veteran-owned small business set-aside procedures, renumbering it as 819.7007 and retitling it as ''VA veteran-owned small business set-aside procedures.'' Most of the existing language is retained with a few updates consistent with legislative requirements. The section provides that the contracting officer must consider VOSB set-asides after SDVOSB, and the conditions to be met to make the determination. New language is added to reflect that the set-asides are only applicable above the micro-purchases.

We propose revising 819.7007, Sole source awards to service-disabled veteran-owned small business concerns, renumbering it as 819.7008 and retitling it as ''Sole source awards to verified service-disabled veteran-owned small businesses.'' Existing language in paragraphs (a) and (d) is retained. Existing paragraph (b) is broken up into (b) and (c) and revised as follows: Paragraph (b) retains existing language recognizing the discretionary nature of this sole source authority; however, it adds that to ensure opportunities are available to the broadest number of SDVOSBs this authority is to be used only to the extent necessary to meet procurement goals and/or when in the best interest of the agency. Paragraph (c) is added providing that in accordance with FAR 6.302–5, contracts awarded using this authority shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304. And lastly, paragraph (e) is added indicating that a procurement estimated to exceed $5 million shall not be split or subdivided to permit the use of this sole source authority.

We propose revising 819.7008, Sole source awards to a verified veteran-owned small business concerns, renumbering it as 819.7009 and retitling it as ''Sole source awards to verified veteran-owned small businesses.'' We propose making similar changes as noted for the proposed language in 819.7008, but as it applies to Veterans other than SDVOSBs (*i.e.,* verified veteran-owned small businesses). Note: The existing section at 819.7009, Contract clauses, is moved to 819.7011 as discussed below.

We propose adding 819.7010, Tiered set-aside evaluation. This new section is proposed to implement FAR Class Deviation (VAIQ 7867323) and PPM 2018–04 Guidance and Procedures regarding use of Tiered Evaluations for use in solicitations set-aside in accordance with the VA Rule of Two. The section introduces the concept of tiered set-aside evaluations. It also defines and establishes the basis for the program, as implemented by VA. This is necessary because currently there is no guidance in the FAR for such a process.

We propose revising 819.7009, Contract clauses, by renumbering it to 819.7011. The section prescribes set-aside clauses for solicitations and contracts. The names of the clauses are changed slightly to further differentiate from those in FAR and the numbering scheme is changed to comply with FAR drafting guidelines. In addition, the actual content of the clauses is updated. Two new clauses have been created to address the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020. The legislation requires that before an award is made under the Veterans First Contracting Program, offerors must submit a certification of compliance with the Limitation on Subcontracting requirements and the Nonmanufacturer rule. This is discussed further under Part 852.

We propose removing and reserving subpart 819.71, VA Mentor-Protégé Program. The underlying sections 819.7101 through 819.7115 are accordingly also removed. The VA Mentor-Protégé Program is inactive. It was replaced with the Small Business Administration's Small Business Mentor Protégé Programs established pursuant to the Small Business Jobs Act of 2010 and the National Defense Authorization Act of 2013. If VA does create a program specific to VA, the proposed language will be in a separate VAAR case for public comment.

VAAR Part 832—Contract Financing

We propose removing subpart 832.9, Prompt Payment, and the underlying section 832.904–70 Determining payment due dates for small businesses.

As a result of a FAR class deviation issued ahead of FAR rulemaking, the VAAR must remove language that VA had enacted timely but is now redundant to the FAR class deviation.

VAAR Part 852—Solicitation Provisions and Contract Clauses

We propose removing 852.207–70, Report of Employment Under Commercial Activities, which is no longer required.

We propose adding 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, to reflect the clause prescribed by 808.405–570. Rather than relying on a clause under FAR part 15, this clause is specific to its use under FAR subpart 8.4 and the GSA FSS program. The clause provides that in an effort to increase contracting opportunities for veterans, depending on the evaluation factors included in the solicitation, VA will evaluate responses received based on the schedule Contractor's VIP verified service-disabled veteran-owned small business/veteran-owned small business (SDVOSB/VOSB) status; and/or their proposed use of SDVOSB/VOSB as subcontractors or teaming partners. This new language proposes that in order to receive credit under this clause a contractor or subcontractor must be listed, at time of submission of offer/quotes and at time of award, as an eligible SDVOSB/VOSB in the Vendor Information Pages (VIP) database at *https://www.vetbiz.va.gov/vip/*. VIP listed service-disabled veteran-owned schedule holders will receive full credit, and those listed in VIP as veteran-owned small businesses will receive partial credit for the SDVOSB/VOSB status evaluation factor. It also requires the offeror proposing to use VIP listed SDVOSBs/VOSBs as subcontractors or teaming partner must provide in their proposals information regarding the proposed SDVOSBs or VOSBs such as names and contact information of the VIP-listed SDVOSBs/VOSBs, a description of the proposed teaming arrangement, the approximate dollar value of the proposed teaming arrangements or subcontract(s), and evidence of teaming partner/subcontractor's VIP database registration and verification.

We propose adding 852.208–71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders and BPAs, as prescribed in 808.405–570. The proposed language provides that if a contractor is selected on the basis of SDVOSB or VOSB status, the contractor agrees to comply with the eligibility requirements in subpart 819.70, including the limitation on subcontracting requirements at 13 CFR 125.6. The clause also requires that if the contractor is selected for award on the basis of teaming/subcontracting in accordance with 852.208–70, the contractor agrees to use the evaluated firm(s) as proposed or to substitute one or more VIP verified SDVOSB/VOSB for work of the same or similar value. Such substitution must be for cause and approved by the contracting officer. It also includes language that pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

In 852.219–9, VA Small Business Subcontracting Plan Minimum Requirements, we propose renumbering it to 852.219–70 to comport with FAR drafting guidelines and numbering conventions. We propose revising language to reflect updated policy with the implementation of 38 U.S.C. 8127–8128 at the VA. We propose emphasizing the requirement to utilize VA verified SDVOSBs/VOSBs in subcontracting plans, when previously this was not specifically addressed. The use of VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business, is specified. And we provide language that pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

We propose removing 852.219–10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside and 852.219–11, VA Notice of Total Veteran Owned Small Business Set- Aside, as the names of the clauses will be changed and renumbered to 852.219–73 and 852.219–74, in order to differentiate from those in the FAR. A discussion is provided where the new numbered clauses are mentioned in this preamble.

We propose removing 852.219–71, VA Mentor-Protégé Program and 852.219–72, Evaluation Factor for Participation in the VA Mentor-Protégé Program because the VA Mentor-Protégé Program is inactive. It was replaced with the Small Business Administration's Small Business Mentor Protégé Programs established pursuant to the Small Business Jobs Act of 2010 and the National Defense Authorization Act of 2013.

We propose adding 852.219–71, Notification of Competition Limited to Eligible 8(a) Participants, which would be used in conjunction with FAR clause 52.219–18, Notification of Competition Limited to Eligible 8(a) Participants, and state that any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the prime contractor.

We propose adding 852.219–72, Notification of Section 8(a) Direct Award, which would provide further information about the Partnership Agreement between the VA and the Small Business Administration.

We propose adding 852.219–73, VA Notice of Total Set-Aside for Verified Service-Disabled Veteran-Owned Small Businesses, and 852.219–74, VA Notice of Total Set-Aside for Verified Veteran-Owned Small Businesses, which were previously numbered as 852.219–10 and 852.219–11. The actual content of the clauses is updated to address new legislative requirements on limitations on subcontracting requirements.

We propose adding 852.219–75, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction. This new clause addresses the limitations on subcontracting certification requirements in Public Law 116–183, August 19, as it is applied to services and construction. The legislation requires that before an award is made under the Veterans First Programs, offeror must submit a certification of compliance with the Limitations in Subcontracting requirements, currently required by SBA at 13 CFR 125.6.

We propose adding 852.219–76, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products. This new clause addresses the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020 as it applies to supplies and products.

VAAR Part 853—Forms

In subpart 853.2—Prescription of Forms, we propose adding 853.219, Small business forms, and to add the following forms referenced in the VAAR dealing with Small Business Programs under VAAR part 819 under the auspices of the Office of Small and Disadvantaged Business Utilization: VA Form 2268, Small Business Program and Contract Bundling Review, which is prescribed in 819.202. Contracting

officers shall use VA Form 2268, Small Business Program and Contract Bundling Review, to document actions related to small business, market research and consideration of the VA Rule of Two. VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business, which is utilized by contractors when proposing subcontracting to SDVOSB/VOSBs.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Paperwork Reduction Act

This proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). This proposed rule also contains collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that are already approved by OMB. The collection of information for 48 CFR 819.704–70, 852.219–9, and 853.219(b) is currently approved by the Office of Management and Budget (OMB and has been assigned OMB control number 2900–0741. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking containing the revised collection of information to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collection(s) of information as requested, VA will immediately remove the provisions containing the collection(s) of information or take such other action as is directed by OMB.

Comments on the revised collection(s) of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR06; VA Acquisition Regulation: Acquisition Planning; Required Sources of Supplies and Services; Market Research; and Small Business Programs'' and should be sent within 60 days of publication of this rulemaking. The information collection(s) associated with this rulemaking can be reviewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection(s) of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on new collection(s) of information in—

- Evaluating whether the new collection(s) of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the new collection(s) of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection(s) of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The removed collection of information associated with this rulemaking is contained in 48 CFR 852.207–70, Report of Employment Under Commercial Activities, under OMB control # 2900–0590. This proposed rule would remove one of the existing information collection requirements associated with this action at 48 CFR 852.207–70 to reflect the discontinuation of 852.207–70, as well as the related prescriptions for the clause at 807.304–77 and 873.110, paragraph (f). The removal of VAAR clause 852.207–70 from this OMB control number will remove 15 estimated annual burden hours and an annual cost savings to respondents of $428.85 that are currently reflected in the OIRA/OMB information collection inventory. However, due to the fact this OMB control number contains two additional VAAR clauses, as well as the increase of the Bureau of Labor Statistics (BLS) hourly rate in May 2020, the net decrease of public burden cost for this OMB control number is $268.85.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612).

The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating processes or procedures. VA estimates no increased or decreased costs to small business entities. This rulemaking clarifies VA's policy regarding the contracting order of priority for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) as a result of the U.S. Supreme Court's decision in *Kingdomware Technologies, Inc.* vs. *the United States,* July 25, 2018, (*Kingdomware*) only as it pertains to the application of the VA Rule of Two in accordance with Public Law 109–461 as codified at 38 U.S.C. 8127–8128, and via the original Final Rule—VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses, published in the **Federal Register** at 74 FR 64619, on December 9, 2009, and effective January 7, 2010.

This regulation seeks to simplify and streamline VA guidance regarding its small business program. The impact on small business overall is positive, as VA continues to implement its small business policies in accordance with legislative mandates pertaining to the Department of Veterans Affairs in 38 U.S.C. 8127–8128 to ensure that that small business owned and controlled by Veterans receive a fair share of contracting opportunities at the Department. VA's hierarchy of contracting preferences, established by law, mandates VA Vendor Information Pages (VIP)-listed SDVOSBs first, then VOSBs, prior to other small business preferences. While consistent with VA's

legislation and mission to serve Veterans, this mandate necessarily makes achievement of other small business goals more challenging that fall in a statutorily based lower contracting order of priority, *e.g.,* awards in the general small business category. Through renewed emphasis on the program in 2016 post the U.S. Supreme Court decision in *Kingdomware Technologies, Inc.,* and through increased training and revised implementing policy and procedures issued to VA contracting officers, VA has successfully achieved specific SDVOSB, VOSB, and small business goals for FY 2020 as discussed below.

This rulemaking does not change VA's overall policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

a. *A description of the reasons why action by VA is being considered.*

Response: This proposed rule is part of VA's initiative to revise and streamline the VAAR in phased increments. It is necessary specifically with this case, to implement updated requirements the Department of Veterans Affairs' (VA) policy and procedures pertaining to 38 U.S.C. 8127–8128 (Pub. L. 109–461), known as the Veterans First Contracting Program, as well as additional legislative amendments and statutory changes to 38 U.S.C. 8127 as a result of Public Law 116–155, the Department of Veterans Affairs Contracting Preference Consistency Act of 2020, which had an effective date of August 8, 2020, and Public Law 116–183, Protecting Business Opportunities for Veterans Act of 2019, enacted October 30, 2020, which have been implemented in advance of this proposed rulemaking through separate class deviations. This rulemaking provides the proposed changes to the CFR for public comments on the updates to key related parts.

b. *A succinct statement of the objectives of, and legal basis for, the rule.*

Response: The objectives of this proposed rule are to implement statutory requirements and make other necessary updates to the VAAR to bring current with the Federal Acquisition Regulation (FAR) and with specific statutory amendments to 38 U.S.C. 8127. In addition to other programmatic updates, VA is addressing in this rule Public Law 116–155, the Department of Veterans Affairs Contracting Preference Consistency Act of 2020, enacted August 8, 2020, and Public Law 116–183, Protecting Business Opportunities for Veterans Act of 2019, enacted October 30, 2020.

c. *A description of and, where feasible, an estimate of the number of small entities to which the rule would apply.*

Response: This rulemaking is not expected to have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

To determine the number of potential affected small businesses and other entities, VA examined the data in the Federal Procurement Data System (FPDS) to estimate the number of small business entities that will be affected by this rule. Based on preliminary data from Fiscal Year 2021, there were 80,148 SDVOSB coded contract actions, and 143,452 coded contract actions to VOSBs. In addition to specific SDVOSB/VOSB contract actions, in FY 2021 there were a total of 219,301 small business contract actions in FPDS. Note: SDVOSBs may also be coded in addition to the SDVOSB category as both a small business and VOSB award. VA analysis indicates that in FY 2021 VA exceeded its goals for SDVOSB, VOSB and small businesses. In FY 2020, VA exceeded—(1) its SDVOSB goal of 15% with a 23.9% achievement; (2) its VOSB goal of 17% with a 24.4% achievement; and (3) its overall small business goal of 28.45% with a 30.3% achievement, even during the midst of the declared national emergency on COVID–19. Considering VA had to make critical and urgent emergency procurements under other authorities, including sole source, of Personal Protective Equipment (PPE) and other related medical supplies and services in support of continuity of its core mission to provide Veterans' healthcare and as part of its overarching pandemic response in support of the declared national emergency, the VA acquisition workforce worked diligently hand-in-hand with its program/project offices to continue to comply with the requirements of 38 U.S.C. 8127–8127 in priority awards to SDVOSBs, then VOSBs. These table below provides the referenced data and successful small business program goal achievements in these categories.

PRELIMINARY FISCAL YEAR 2021 SMALL BUSINESS GOALING DATA

Fiscal year 2021	Total contract dollars and actions	Small business	SDVOSB	VOSB
Goal		28.45%	15.0%	17.0%
Actual Performance		30.3%	23.9%	24.4%
Dollars awarded by VA	$34,351,110,891	$10,307,742,213	$8,144,793,570	$8,365,441,281
Total Contract Awards	1,833,460	219,301	80,148	143,452

Source: Federal Procurement Data System. Dataset downloaded on December 9, 2021.

This proposed rule should help small businesses continue to receive a fair share of the VA contracting dollars.

d. *A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

Response: This rule does not impose any new reporting, recordkeeping or other compliance requirements for small entities.

e. *An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.*

Response: This rule does not duplicate, overlap, or conflict with any other Federal rules.

f. *A description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.*

Response: VA is unable to identify any significant alternatives that would accomplish the requirements of this proposed rule and update of the VAAR. In accordance with 41 U.S.C. 1707, VA must provide for public comment any

proposed revisions to the VAAR, some of which were implemented as class deviations to ensure compliance with legislation or in accordance with mandates of the Federal courts, to include the U.S. Supreme Court. Through this rule, the public will have an opportunity to provide public comment prior to publication of a final rule. VA considered initially issuing a complete revision to the VAAR in one case, but given ongoing litigation and legislative initiatives, as well as the complexity of the various VAAR parts, the phased incremental approach permitted the public to be able to focus on specific topics and parts of interest and allow them to timely submit public comments which may have been more onerous if the complete VAAR were revised at one time. By updating the VAAR, it will increase transparency and furthers the consistent implementation of any new or revised policy and ensures wide dissemination to both the VA acquisition workforce, the public, interested parties, and affected small entities such as SDVOSBs, VOSBs, and small businesses, including AbilityOne participating entities. Small entities cannot be exempted from coverage under this rule as the VAAR applies to all potential offerors, large or small.

The rule is not expected to have a significant economic impact to SDVOSBs or VOSBs since the VA Rule of Two will continue to apply to VA's unique Veterans First Contracting Program that was first implemented in the VAAR in 2009, and which was subsequently revised consistent with revised policy and procedures issued by class deviations as a result of court cases and new legislative amendments.

VA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

Unfunded Mandates

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

List of Subjects

48 CFR Part 802, 807, 808, 810, 813, 832, and 853

Government procurement.

48 CFR Part 819

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small business, Veterans.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 15, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

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

For the reasons set forth in the preamble, VA proposes to amend 48 CFR, chapter 8 as follows:

PART 802—DEFINITIONS OF WORDS AND TERMS

■ 1. Revise the authority citation for part 802 to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

■ 2. Amend section 802.101 by adding definitions for ''Public Law (Public Law) 109–461'', ''SDVOSB/VOSB'', ''VA Rule of Two'', and ''Veterans First Contracting Program'', and by revising the definitions for ''Service-disabled veteran-owned small business (SDVOSB)'', ''Vendor Information Pages (VIP) or VIP database'', and ''Veteran-owned small business (VOSB)'' in alphabetical order to read as follows:

802.101 Definitions.

* * * * *

Public Law (Pub. L.) 109–461 means the Veterans Benefits, Health Care and Information Technology Act of 2006, as codified in 38 U.S.C. 8127 and 8128.

* * * * *

SDVOSB/VOSB when used as an initialism means a service-disabled veteran-owned small business (SDVOSB) and/or veteran-owned small business (VOSB) that has been found by VA eligible to participate in the Veterans First Contracting Program implemented at subpart 819.70 and listed in the Vendor Information Pages. The term is synonymous with VA or VIP-verified small business concerns owned and controlled by Veterans.

* * * * *

Service-disabled veteran-owned small business (SDVOSB) or small business concern owned and controlled by Veterans with service-connected disabilities has the same meaning as *service-disabled veteran-owned small business concern* defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. In addition, some SDVOSB listed in the VIP database may be owned and controlled by a surviving spouse. See definition of *surviving spouse* in 802.101.

* * * * *

VA Rule of Two means the determination process mandated in 38 U.S.C. 8127(d)(1) whereby a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. For purposes of this VA specific rule, a service-disabled veteran-owned small business (SDVOSB) or a veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), (f) and VAAR 819.7003 and be listed as verified in the Vendor Information Pages (VIP) database.

* * * * *

Vendor Information Pages (VIP) or VIP database means the Department of Veterans Affairs Office of Small and Disadvantaged Business Utilization (OSDBU) Center for Verification and Evaluation (CVE) Vendor Information Pages (VIP) database at *https://www.vetbiz.va.gov/vip/*. This site's database lists businesses that VA CVE has determined eligible for the Veterans First Contracting Program.

Veteran-owned small business (VOSB) has the same meaning as *veteran-owned small business concern* defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. SDVOSBs, including businesses whose SDVOSB status derive from ownership and control by a surviving spouse, are also considered VOSBs, as long as they are listed as eligible in VIP.

Veterans First Contracting Program means the program authorized by Public Law 109–461 (38 U.S.C. 8127 and 8128), as implemented in subpart 819.70. This

program applies to all VA contracts (see FAR 2.101 for the definition of contracts) as well as Blanket Purchase Agreements (BPAs), Basic Ordering Agreements (BOAs), and orders against the Federal Supply Schedules (FSS), unless otherwise excluded by law.

* * * * *

PART 807 [Removed and Reserved]

■ 3. Remove and reserve part 807.

■ 4. Revise part 808 to read as follows:

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

808.000 Scope of part.

This part deals with prioritizing sources of supplies and services for use by the Government based on unique VA statutory programs, as well as requirements when using the General Services Administration (GSA) Federal Supply Schedules program including the GSA delegated VA Federal Supply Schedule program.

808.001 General.

808.001–70 Definitions.

As used in this part—

Veterans Affairs (VA) Federal Supply Schedule (FSS) or ''VA FSS'' means FSS contracts awarded by the VA National Acquisition Center, under authority delegated by the General Services Administration (GSA) per FAR 8.402(a). VA FSS contracts include medical, dental, pharmacy and veterinary equipment and supplies in Federal Supply Classification (FSC) Group 65, instruments and laboratory equipment in FSC Group 66 and health care services in FSC Group 621.

808.002 Priorities for use of mandatory Government sources.

(a) *Priorities.* Contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed below in descending order of priority:

(1) *Supplies.* (i) VA inventories including the VA supply stock program (41 CFR 101–26.704) and VA excess.

(ii) Excess from other agencies (see FAR subpart 8.1).

(iii) Federal Prison Industries, Inc. (see 808.603). Prior to considering award of a contract to Federal Prison Industries, Inc, contracting officers shall apply the VA Rule of Two to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127–28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified service-disabled veteran-owned small business (SDVOSB)/veteran-owned small business (VOSB) as provided in subpart 819.70, FPI remains a mandatory source in accordance with FAR 8.002.

(iv) Supplies that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7). Supplies that are on the Procurement List but which do not meet the definition of a covered product are only required to be procured from a mandatory source in accordance with FAR 8.002 if an award is not made to a VIP-listed and verified SDVOSB/VOSB after following the procedures set forth in subpart 819.70.

(A) *Definition.* As used in this paragraph—

Covered product means a product that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703) and was included on the Procurement List on or before December 22, 2006; or

(2) Meets the following criteria—

(i) Is a replacement for a product under this paragraph;

(ii) Is essentially the same and meeting the same requirement as the product being replaced; and

(iii) The contracting officer determines the product meets the quality standards and delivery schedule requirements of VA.

(B) *Policy.* Except as provided in paragraph (a)(1)(iv)(C) and (D), contracting officers shall procure covered products that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7. Contracting officers shall not procure products that are on the Procurement List, but which do not meet the definition of a covered product using the procedures set forth in FAR subpart 8.7, unless award cannot be made to a VIP-listed and verified SDVOSB/VOSB pursuant to the procedures set forth in subpart 819.70.

(C) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart 819.70.* If a contract for a covered product awarded under the authority of 38 U.S.C. 8127(d)(1) to a VIP-listed SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with 819.7006 and 819.7007.

(D) *Termination or expiration of excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(1)(iv)(C) of this section is terminated or expires, contracting officers shall procure such covered product through the AbilityOne Program as a priority mandatory Government source (see (a)(1)(iv)(B) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(1) Two or more SDVOSBs/VOSBs will submit offers; and

(2) Award can be made at a fair and reasonable price that offers best value to the United States.

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101–26.3), the Defense Logistics Agency (see 41 CFR 101–26.6), the Department of Veterans Affairs (see 41 CFR 101–26.704), and military inventory control points.

(2) Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7). Services that are on the Procurement List, but which do not meet the definition of a covered service are only required to be procured from a mandatory source in accordance with FAR 8.002 if an award is not made to a VIP-listed and verified SDVOSB/VOSB after following the procedures set forth in subpart 819.70.

(i) *Definition.* As used in this paragraph—

Covered service means a service that—

(A) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703) and was included on the Procurement List on or before December 22, 2006; or

(B) Meets the following criteria—

(1) Is a replacement for a service under this paragraph;

(2) Is essentially the same and meeting the same requirement as the service being replaced; and

(3) The contracting officer determines the service meets the quality standards and delivery schedule requirements of VA.

(ii) *Policy.* Except as provided in paragraph (a)(2)(iii) and (iv) of this section, contracting officers shall procure covered services that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7. Contracting officers shall not procure services that are on the Procurement List, but which do not meet the definition of a covered service using the procedures set forth in FAR subpart 8.7, unless award cannot be made to a VIP-listed and verified SDVOSB/VOSB pursuant to the procedures set forth in subpart 819.70.

(iii) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart 819.70.* If a contract for a covered service awarded under the authority of 38 U.S.C. 8127(d)(1) to a VIP-listed SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with 819.7006 and 819.7007.

(iv) *Termination or expiration of certain excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(2)(iii) of this section is terminated or expires, contracting officers shall procure such covered service through the AbilityOne Program as a priority mandatory Government source (see (a)(2)(ii) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(A) Two or more SDVOSBs/VOSBs will submit offers; and

(B) Award can be made at a fair and reasonable price that offers best value to the United States.

(b) *Unusual and compelling urgency.* The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see FAR 6.302–2, 8.405–6, 13.106–1 and part 806 for justification requirements).

808.004 Use of other sources.

808.004–70 Use of other priority sources.

(a) *Veterans contracting priority.* In order to fulfill the requirements of 38 U.S.C. 8127–8128 (see subpart 819.70), contracting officers shall award contracts (see FAR 2.101 for the definition of contracts), as well as Blanket Purchase Agreements (BPAs), and orders against VA and GSA Federal Supply Schedules (FSS), providing priority in the awarding of such contracts to VIP-listed SDVOSBs first, then VOSBs.

(b) *Strategic sourcing priorities and application of the VA Rule of Two.* To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (*e.g.,* prime-vendor, national contracts, VA FSS). If these strategic sourcing contracts were subject to the VA Rule of Two, they may be determined mandatory by the head of the contracting activity. Contracting officers shall consider these priority contract vehicles before using other existing contract vehicles.

Subpart 808.4—Federal Supply Schedules

808.402 General.

(a) GSA has delegated authority to the VA to procure medical equipment, supplies, services and pharmaceuticals under the VA Federal Supply Schedule (FSS) program. The VA FSS program includes medical supplies in Federal Supply Classification (FSC) Groups 65 and 66 and services in FSC 621 for Professional and Allied Healthcare Staffing Services and Medical Laboratory Testing and Analysis Services.

808.404 Use of Federal Supply Schedules.

808.404–70 Use of Federal Supply Schedules—the Veterans First Contracting Program.

(a) The Veterans First Contracting Program, implemented in subpart 819.70 pursuant to 38 U.S.C 8127–8128, applies to BPAs, and orders under FAR subpart 8.4 and has precedence over other small business programs.

(b) Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70. Specifically, the contracting officer will consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. These priorities will be followed by preferences for other small businesses in accordance with 819.7005.

(c) If unable to satisfy requirements for supplies and services from the mandatory sources in 808.002 and 808.004–70, contracting officers may consider commercial sources in the open market (see FAR 8.004(b)) if an open market acquisition is most appropriate (see FAR 8.004) and a VA Rule of Two determination is made (see subpart 819.70).

(d) When the servicing agency will award contracts under an interagency agreement on behalf of the VA, the contracting officer shall ensure the interagency acquisition complies with FAR subpart 17.5 and subpart 817.5 and includes terms requiring compliance with the VA Rule of Two (see 817.501).

808.405 Ordering procedures for Federal Supply Schedules.

808.405–70 Set-aside procedures for VA and GSA Federal Supply Schedules.

To satisfy VA legislative requirements, contracting officers shall use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services under this subpart as follows:

(a) *When market research supports set-asides.* Pursuant to 38 U.S.C. 8127, contracting activities shall set-aside BPAs and orders for VIP-listed SDVOSBs or VOSBs when, based on research, the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans or owned and controlled by Veterans with service-connected disabilities will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States. When the VA Rule of Two is met:

(1) The set-aside requirements as provided in 819.7006 and 819.7007 are mandatory.

(2) The requirements in FAR 8.405–1, 8.405–2, and 8.405–3, apply, except only quotes received from verified (*i.e.,* VIP-listed) and eligible SDVOSBs or VOSBs will be considered.

(3) The eligibility requirements of 819.7003, 819.7006, and 819.7007 apply, including the requirement for offerors to be VIP-listed at the time they submit offers/quotes as well as at the time awards are made.

(4) The contracting officer shall notify potential offerors of the unique VA verification requirements by including in the solicitation the applicable set-aside clause prescribed at 819.7011.

(b) *When market research does not support set-asides.* Pursuant to 38

U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside in either FSS or the open market, the contracting activity shall give priority in the award of orders placed under this part to VIP-listed SDVOSBs/VOSBs through the use of evaluation preferences giving priority to SDVOSBs first, then to a lesser extent VOSBs, and finally to any firm that proposes to use SDVOSBs/VOSBs as subcontractors. Contracting officers must use the clause prescribed in 808.405–570(b).

(c) *SDVOSB/VOSB eligibility requirements.* The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including current SDVOSB and VOSB VIP-listed status at the time of submission of offer/quote and at time of award. The offeror must also represent that it meets the small business size standard for the assigned NAICS as well as other small business requirements (including completing the certification found in 852.219–75 or 852.219–76.

808.405–570 Small business set-asides and preferences—Veterans First Contracting Program clauses.

(a) When setting aside an order pursuant to 808.405–70(a), the applicable clause prescribed in 819.7011 for SDVOSB/VOSB set-asides shall be used.

(b) When an SDVOSB/VOSB set-aside is not feasible, the ordering activity shall use the clause at 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, for task orders, delivery orders or BPAs using evaluation factors other than price alone.

(c) The ordering activity shall insert the clause at 852.208–71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders or BPAs, in request for quotes and resulting orders that include clause 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

Subpart 808.6—Acquisition from Federal Prison Industries, Inc.

808.603 Purchase priorities.

A waiver from Federal Prison Industries is not needed when comparable supplies and services are procured in accordance with subpart 819.70.

Subpart 808.8 [Reserved]

■ 5. Part 810 is revised to read as follows:

PART 810—MARKET RESEARCH

Sec.
810.000 Scope of part.
810.001 Policy.
810.001–70 Market research policy—use of VA Vendor Information Pages.

Authority: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

810.000 Scope of part.

The Veterans First Contracting Program in subpart 819.70 applies to contract actions under this part and takes precedence over other small business programs referenced in FAR part 10 and FAR part 19.

810.001 Policy.

810.001–70 Market research policy—use of VA Vendor Information Pages.

When performing market research, contracting officers shall review the Vendor Information Pages (VIP) database at *https://www.vetbiz.va.gov/vip/* as required by subpart 819.70. The contracting officer will search the VIP database by applicable North American Industry Classification System (NAICS) codes to determine whether two or more verified service-disabled veteran-owned small businesses (SDVOSBs) and/or veteran-owned small businesses (VOSBs), with the appropriate NAICS code, are listed as verified in the VIP database. The contracting officer will determine, among other things as the requirement dictates, whether VIP-listed SDVOSBs or VOSBs identified as a result of market research are capable of performing the work, are likely to submit an offer/quote, and whether an award can be made at a fair and reasonable price that offers best value to the Government. The contracting officer shall use the market research for acquisition planning purposes, and as set forth in VAAR subpart 819.70, conduct a VA Rule of Two determination in accordance with the contracting order of priority (see 819.7005 and 819.7006).

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

■ 6.The authority citation for part 813 continues to read as follows:

Authority: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301 through 1.304.

■ 7. Revise section 813.003–70 to read as follows:

813.003–70 General policy.

(a) The Veterans First Contracting Program in subpart 819.70 applies to VA contracts, orders and BPAs under this part and has precedence over other small business programs referenced in FAR parts 13 and 19. For VA policy regarding mandatory Government sources, refer to 808.002.

(b) Notwithstanding FAR 13.003(b)(2), the contracting officer shall make an award utilizing the priorities for veteran-owned small businesses as implemented within the VA hierarchy of small business program preferences, the Veterans First Contracting Program in subpart 819.70. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with 819.7005.

(c) When using competitive procedures, the preference for restricting competition to verified SDVOSBs/VOSBs in accordance with paragraph (b) of this section is mandatory whenever market research provides a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified firms, and that an award can be made at a fair and reasonable price that offers best value to the Government.

(1) Pursuant to 38 U.S.C. 8127, contracts under this part shall be set-aside for SDVOSBs/VOSBs, in accordance with 819.7006 or 819.7007 when supported by market research. Contracting officers shall use the applicable set-aside clause prescribed at 819.7011.

(2) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting officer shall include evaluation factors as prescribed at 815.304–70 and the evaluation criteria clause prescribed at 815.304–71(a).

(d) The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including verification of the SDVOSB and VOSB status of an offeror, and other small business requirements in 13 CFR part 121 and 13 CFR 125.6 (*e.g.,* small business representation, nonmanufacturer rule, and subcontracting limitations (see 819.7004 and 819.7011)).

Subpart 813.1—Procedures.

■ 8. Revise section 813.106 to read as follows:

813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

813.106–70 Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program.

(a) When using competitive procedures under this part, the contracting officer shall use the Veterans First Contracting Program in subpart 819.70 and the guidance set forth in 813.003–70.

(b) Pursuant to 38 U.S.C 8127(b), contracting officers may use other than competitive procedures to enter into a contract with a verified SDVOSB or VOSB for procurements below the simplified acquisition threshold, as authorized by FAR 6.302–5 and 806.302–570(a) and (b).

(c) For procurements above the simplified acquisition threshold, pursuant to 38 U.S.C. 8127(c), contracting officers may also award a contract under this part to a firm verified under the Veterans First Contracting Program at subpart 819.70, using procedures other than competitive procedures, as authorized by FAR 6.302–5 and 806.302–570(a) and (c), and in accordance with 819.7008 and 819.7009.

■ 9. Part 819 is revised to read as follows:

PART 819—SMALL BUSINESS PROGRAMS

Sec.

Authority: 15 U.S.C. 631, *et seq.*; 15 U.S.C. 637(d)(4)(E); 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303, 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

819.000 Scope of part.

(a) This part supplements FAR part 19 and implements the service-disabled veteran-owned small business (SDVOSB), veteran-owned small business (VOSB) and small business provisions of title 38 U.S.C. 8127 and 8128, Executive Order 13360 and the Small Business Act (15 U.S.C. 631 et. seq.) as applied to the Department of Veterans Affairs (VA). This part also covers—

(1) Goals for using SDVOSBs, and VOSBs;

(2) Priorities and preferences for using SDVOSBs/VOSBs;

(3) SDVOSB/VOSB eligibility and contract compliance;

(4) Setting aside acquisitions for SDVOSBs/VOSBs;

(5) Sole-source awards to SDVOSBs and VOSBs; and

(6) Evaluation preferences and contract clauses.

Subpart 819.2—Policies

819.201 General policy.

(a) It is VA policy that small business concerns owned and controlled by veterans shall have maximum practicable opportunity to participate in VA acquisitions, consistent the priorities and preferences prescribed under the Veterans First Contracting Program in subpart 819.70.

(1) To carry out this policy the Secretary shall establish annual SDVOSB and VOSB contracting goals.

(2) In support of these goals, each administration and staff office shall in turn establish annual goals for each subordinate contracting activity that present, for that activity, the maximum practicable opportunity for small business concerns, and particularly SDVOSBs/VOSBs, to participate in the performance of the activity's contracts and subcontracts.

(3) The attainment of these goals or the use of interagency acquisition vehicles does not limit the applicability of the Veterans First Contracting Program and priorities in subpart 819.70.

(c) In addition to the duties and responsibilities in FAR 19.201(c), the Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for overseeing implementation of the Veterans First Contracting Program under subpart 819.70.

(d) Each organization with contracting authority shall designate small business specialists/technical advisors in coordination with the OSDBU Director.

819.202 Specific policies.

OSDBU is responsible for reviewing procurement strategies, establishing thresholds for such reviews and making recommendations to assist contracting officers in the implementation of this part. These responsibilities shall be conducted within the VA hierarchy of small business program preferences established by 38 U.S.C. 8127(h) (see subpart 819.70), which requires VA to consider preferences for VIP-listed SDVOSBs first, then preferences for VIP-listed VOSBs. Contracting officers shall use VA Form 2268, Small Business Program and Contract Bundling Review, to document actions and recommendations.

819.203 Relationship among small business programs.

819.203–70 Priority for SDVOSB/VOSB contracting preferences.

(a) 38 U.S.C. 8127 and 8128 require the VA to provide priority and establish special acquisition methods to increase contracting opportunities for SDVOSBs/VOSBs. These priorities and special acquisition methods are set forth in subpart 819.70 and shall be applied by contracting officers before other

priorities and preferences in FAR 19.203.

(b) Pursuant to 38 U.S.C. 8128, contracting officers shall give priority to SDVOSBs/VOSBs if such business concern(s) also meet the requirements of that contracting preference. This requirement applies even when using a contracting preference under FAR part 19 (for example, a women-owned small business set-aside).

Subpart 819.3—Determination of Small Business Size and Status for Small Business Programs

819.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.

819.307–70 SDVOSB/VOSB status protests.

All protests relating to size, status and/or whether an SDVOSB or a VOSB is a ''small business'' are subject to the Small Business Administration (SBA) regulations at 13 CFR part 121 and must be filed in accordance with SBA guidelines at 13 CFR part 134 (see FAR subpart 19.3). Pursuant to Public Law 114–328, SBA will hear cases related to size and status, including ownership and control challenges under the VA Veterans First Contracting Program (see 38 U.S.C. 8127(f)(8)).

Subpart 819.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves

819.501 General.

819.501–70 General principles for setting aside VA acquisitions.

(a) The following principles apply to VA acquisitions under this subpart:

(1) Before setting aside or reserving an acquisition for small businesses under FAR subpart 19.5, contracting officers shall refer to 808.002, 819.203–70 and subpart 819.70 for VA SDVOSB/VOSB priorities and preferences.

(2) Set-asides under the Veterans First Contracting Program in subpart 819.70 (see 819.7006 and 819.7007) have precedence over other small business set-asides authorized in FAR part 19, both above and below the simplified acquisition threshold (SAT). An SDVOSB/VOSB set-aside satisfies the legislative requirement to reserve actions below the SAT for small business.

(3) Pursuant to 38 U.S.C. 8127(d), set-asides for SDVOSBs/VOSBs are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified firms, and that an award can be made at a fair and reasonable price that offers best value to the Government. (VA Rule of Two).

(b) The set-aside principles in this section apply to VA acquisitions even when a procuring activity is meeting its goals or is planning the use of an interagency agreement, Federal Supply Schedule, or a multiple award contract, including a Governmentwide contract vehicle.

(c) The requirements in this subsection apply to all VA acquisitions under this subpart, including reserves, orders and BPAs under multiple award contracts, GSA Federal Supply Schedule contracts and Multi-Agency Contracts (MACs) awarded by another agency. A set-aside restricted to SDVOSBs/VOSBs pursuant to subpart 819.70 satisfies competition requirements in FAR part 6, as well as fair opportunity requirements for orders under multiple-award contracts (see FAR 16.505(b)(2)(i)(F)).

819.502 Setting aside acquisitions.

819.502–1 Requirements for setting aside acquisitions.

(b) Contracting officers shall refer to 808.002 for the VA policy regarding priorities for use of SDVOSBs/VOSBs and mandatory Government sources.

819.502–2 Total small business set-asides.

(a) If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis or, if permitted in the solicitation, the contracting officer will follow the tiered set-aside evaluation procedures in 819.7010, Tiered evaluation, and proceed to the next eligible tier in the evaluation process.

819.507 Solicitation provisions and contract clauses.

819.507–70 Additional VA solicitation provisions and contract clauses.

For contracts, orders or BPAs to be issued as SDVOSB/VOSB reserve, tiered evaluation, set-aside or sole source, see 819.7011. Also see subparts 808.4, 815.3, and 819.203–70 for requirements and clauses applicable to VA small business set-asides.

Subpart 819.6—[Reserved]

Subpart 819.7—The Small Business Subcontracting Program

819.704–70 VA subcontracting plan requirements.

(a) VA's current subcontracting goals, at a minimum, shall be inserted into all solicitations which contain FAR clause 52.219–9. To the maximum extent possible, the contracting officer shall ensure that individual subcontracting plans submitted by offerors subject to clause 852.219–70, VA Small Business Subcontracting Plan Minimum Requirements, include SDVOSB/VOSB goals that are commensurate with the annual VA SDVOSB/VOSB subcontracting goals (see 819.708).

(1) Only firms listed as verified on the Vendor Information Pages (VIP) database (see subpart 819.70) will count towards SDVOSB and VOSB goals.

(2) A contractor may reasonably rely on a subcontractor's status as shown in the VIP database as of the date of subcontract award, provided the contractor retains records of the results of the VIP database query.

(3) In furtherance of 38 U.S.C. 8127(a)(4), contractors shall submit subcontracting plan reports to OSDBU as set forth in clause 852.219–70, VA Small Business Subcontracting Plan Minimum Requirements. Unless otherwise directed by OSDBU, VA Form 0896A, Report of Subcontracts to Small and Veteran Owned Business, shall be used to submit the required information.

(b) Subcontracting goals should be expressed as a percentage of total dollars to be subcontracted unless otherwise stated in the solicitation.

(c) If an offeror proposes to use an SDVOSB/VOSB subcontractor for the purpose of receiving SDVOSB/VOSB evaluation factors credit pursuant to 808.405–70 or 815.304–70, the contracting officer shall ensure that the offeror, if awarded the contract, actually uses the proposed subcontractor or another SDVOSB/VOSB for that subcontract or for work of similar value, in accordance with clause 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs or 852.215–71, Evaluation Factor Commitments.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB or VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business (see 809.406–270, Additional causes for debarment).

819.708 Contract clauses.

(b) The contracting officer shall insert clause 852.219–70, Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include FAR clause 52.219–9, Small Business Subcontracting Plan.

Subpart 819.8—Contracting With the Small Business Administration (the 8(a) Program)

819.800 General.

(e) The Small Business Administration (SBA) and the Department of Veterans Affairs (VA) have entered into a Partnership Agreement delegating SBA's contract execution and administrative functions to VA. Contracting officers shall follow the alternate procedures in the Partnership Agreement and this subpart, as applicable, to award an 8(a) contract. In the event the Partnership Agreement ceases to be in effect, contracting officers shall follow the procedures in FAR subpart 19.8.

819.811 Preparing the contracts.

819.811–370 VA/SBA Partnership Agreement and contract clauses.

(a) Before placing new requirements under the 8(a) program, the contracting officer must determine whether an SDVOSB/VOSB set-aside is mandated under the VA Rule of Two (see 802.101, Definitions). If the determination does not result in an SDVOSB/VOSB set-aside, the contracting officer may consider the 8(a) program.

(b) The Partnership Agreement provides that SBA can release procurements already in the program whenever an SDVOSB or VOSB set-aside is feasible.

(c) When an 8(a) acquisition is processed pursuant to the Partnership Agreement, the contracting officer shall:

(1) For competitive solicitations and awards, use the clause at 852.219–71, VA Notification of Competition Limited to Eligible 8(a) Participants, substituting paragraph (c) of FAR 52.219–18 Notification of Competition Limited to Eligible 8(a) Participants. with the paragraph (c) contained in 852.219–71.

(2) For noncompetitive solicitations and awards insert the clause at 852.219–72, Notification of Section 8(a) Direct Awards, instead of the prescribed FAR clauses at 52.219–11, Special 8(a) Contract Conditions; 52.219–12, Special 8(a) Subcontract Conditions; and 52.219–17, Section 8(a) Award.

(3) In all instances, contracting include the clause at FAR 52.219–14, Limitations on Subcontracting, or if applicable 52.219–33 Nonmanufacturer Rule.

Subpart 819.70—The VA Veterans First Contracting Program

819.7001 General.

(a) Sections 502 and 503 of Public Law 109–461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, as amended (38 U.S.C. 8127–8128), authorizes a VA specific program to increase contracting opportunities for eligible small business concerns owned and controlled by Veterans with service-connected disabilities and small business concerns owned and controlled by Veterans. Once ownership and control by these veterans is verified, these businesses are referred to as service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) or collectively SDVOSB/VOSB for ease of reference.

(b) The program as implemented in this subpart shall be known as the Veterans First Contracting Program. The purpose of the program is to increase contracting opportunities and provide for priority in the award of contracts and subcontracts to SDVOSBs/VOSBs so they can fully participate in the VA contracting process. Eligible SDVOSBs qualify for any VOSB preferences under this subpart.

(c) 38 U.S.C. 8127 (b), (c), and (d) provide the authority for VA contracting officers to make awards to SDVOSBs/VOSBs using restricted competition, as well as other than full and open competition (sole source), as set-forth in this subpart. 38 U.S.C. 8128 provides the authority for VA to give SDVOSBs/VOSBs priority in the awarding of contracts and subcontracts using evaluation preferences.

(d) Contracting officers shall award contracts by restricting competition to eligible SDVOSBs/VOSBs as provided in 819.7006 and 819.7007. The contracting officer may use other preferences in this subpart as appropriate and in accordance with procuring activity guidelines.

(e) Pursuant to 38 U.S.C. 8128, contracting officers shall give priority to SDVOSBs/VOSBs if such business concern(s) also meet the requirements of that contracting preference. In carrying out this responsibility, contracting officers shall include the clauses prescribed at 808.405–570 and 815.304–71 in competitive solicitations and contracts that are not set-aside for SDVOSB/VOSB, including those under FAR part 12. This requirement applies even when using a contracting preference under FAR part 19 (for example, a women-owned small business set-aside).

(f) The attainment of goals or the use of interagency vehicles or Governmentwide contract vehicles (*i.e.,* Federal Supply Schedules (FSS)) does not relieve the contracting officer from using SDVOSB/VOSB set-asides and other preferences as provided in subpart 819.70. Moreover, if the VA enters into a contract, agreement, or other arrangement with any Governmental entity to acquire goods or services, the entity acting on behalf of the VA through such an interagency acquisition or other agreement will comply, to the maximum extent feasible, with the provisions of the Veterans First Contracting Program as set forth in this subpart.

(g) Contracting officers shall ensure awards are made using the VA hierarchy of SDVOSB/VOSB preferences in this subpart. Specifically, the contracting officer will consider preferences for eligible SDVOSBs first, then preferences for other eligible VOSBs.

(h) When an offer of an SDVOSB/VOSB prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the contracting officer must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.

819.7002 Applicability.

Unless otherwise exempted by law, this subpart applies to VA contracting activities and contracts (see FAR 2.101, Definitions) including BPAs and orders under FAR subpart 8.4 and commercial acquisitions under FAR part 12. In addition, this subpart applies to VA contractors, their subcontractors and to any Government entity that has a contract, agreement, or other arrangement with the VA to acquire goods and services on behalf of the VA (see 817.502). For applicability and VA policy regarding priorities for use of mandatory Government sources, see 808.002.

819.7003 Eligibility.

(a) SDVOSB/VOSB size eligibility, challenges and appeals are governed by the Small Business Administration (SBA) regulations at 13 CFR parts 121,125, and 134, except where directed otherwise by this part or 38 CFR part 74, Veterans Small Business Regulations.

(b) At the time of submission of offers/quotes, and at the time of award of any contract, the offeror must represent to the contracting officer that it is a—

(1) SDVOSB or VOSB eligible under this subpart;

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the acquisition; and

(3) Listed as a verified SDVOSB/VOSB on the VA's Vendor Information Pages (VIP) at *https://www.vetbiz.va.gov/vip/.*

(c) A joint venture may be considered eligible if it meets the requirements in 13 CFR part 125; and the joint venture is listed in the VIP database.

(d) To receive a benefit under the Veterans First Contacting Program, an otherwise eligible SDVOSB/VOSB must also meet SBA requirements at 13 CFR part 121, Small Business Size Regulations and 13 CFR part 125, Government Contracting Programs, including the nonmanufacturer rule requirements at 13 CFR 121.406(b) and limitations on subcontracting at 13 CFR 125.6. The nonmanufacturer rule (see 13 CFR 121.406) and the limitations on subcontracting requirements apply to all SDVOSB and VOSB set-aside and sole source contracts above the micro-purchase threshold. An offeror shall submit a certification of compliance to be considered eligible for any award under this part (see 819.7004).

(e) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business. See 809.406–270, Additional causes for debarment.

819.7004 Limitations on subcontracting compliance requirements.

(a) A contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that—

(1) Only VIP-listed SDVOSBs are considered eligible and/or ''similarly situated'' under an SDVOSB sole source or set-aside.

(2) A VOSB is subject to the same limitations on subcontracting that apply to an SDVOSB.

(3) Any VIP-listed SDVOSB/VOSB is considered eligible and/or ''similarly situated'' under a VOSB sole source or set-aside.

(b) Pursuant to the authority of 38 U.S.C. 8127(k)(2), a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see 819.7011).

(1) The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal.

(2) The Government will not consider offers for award from offerors that do not provide the certification with their bid, quotation, or proposal, and all such responses will be deemed ineligible for evaluation and award.

(c) An otherwise eligible first tier subcontractor must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded.

(d) An SDVOSB/VOSB awarded a contract on the basis of a set-aside, sole source, or an evaluation preference is required to comply with the limitations on subcontracting either by—

(1) The end of the base term, and then by the end of each subsequent option period; or, by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside for SDVOSB/VOSB as described in 808.405 and FAR 16.505(b)(2)(i)(F), or for an order issued directly to an SDVOSB/VOSB in accordance with FAR 19.504(c)(1)(ii), by the end of the performance period for the order.

(e) The contracting officer may also, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance of the contract, and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(f) Pursuant to Public Law 116–183, the Office of the Small and Disadvantaged Business Utilization (OSDBU) and Chief Acquisition Officer (CAO), will implement a process to monitor compliance with the requirement in this section. The OSDBU and CAO shall jointly refer any violations or suspected violations to the VA Office of Inspector General. This referral obligation does not relieve contracting officers of their obligation to report suspected violations of law to the OIG.

(1) If the Secretary or designee determines in consultation with the Inspector General that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith with respect to the requirements described in 819.7003 paragraph (d), such SDVOSB/VOSB shall be subject to any or all of the following—

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(2) The Inspector General shall report to the Congress annually on the number of referred violations and suspected violations, and the disposition of such violations, including the number of small business concerns suspended or debarred from federal contracting or referred for Department of Justice prosecution.

819.7005 Contracting order of priority.

(a) In determining the acquisition strategy applicable to a procurement requirement not otherwise covered under 808.002, the contracting officer shall observe the order of contracting preferences in 38 U.S.C. 8127(h).

(b) Specifically, preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded to small business concerns owned and controlled by Veterans with service-connected disabilities as provided in this subpart.

(2) Contracts to small business concerns owned and controlled by Veterans that are not covered by paragraph (a)(1) of this section as provided in this subpart.

(3) Contracts awarded pursuant to—

(i) Section 8(a) of the Small Business Act (15 U.S.C. 637(a) as provided in FAR subpart 19.8—Contracting with the Small Business Administration (The 8(a) Program); or

(ii) Section 31 of the Small Business Act (15 U.S.C. 657a) as provided in FAR subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program.

(4) Contracts awarded pursuant to any other small business set aside contracting preference, with due deference to the priority for awarding to Women-owned small businesses as provided in FAR 19.203(b) through (e) and FAR subpart 19.15.

819.7006 VA service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 808.002, 813.106, 819.7007, and 819.7008, the contracting officer shall set-aside a contract action exceeding the micro-purchase threshold

for competition restricted to VIP-listed SDVOSB upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more eligible VIP-listed SDVOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

(b) When conducting SDVOSB set-asides, the contracting officer shall ensure that—

(1) Offerors are registered and verified as eligible in the VIP database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB and small business status based on the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the solicitation/contract, as set forth in 819.7003(b) or (c).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VIP-listed SDVOSB, the contracting officer may make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition if warranted or otherwise procured using the most appropriate strategy based on the results of market research.

819.7007 VA veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 808.002, 813.106, 819.7007, and 819.7008, the contracting officer shall set aside a contract action exceeding the micro-purchase threshold for competition restricted to VIP-listed VOSBs upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more VIP-listed VOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

(b) When conducting VOSB set-asides, the contracting officer shall ensure that—

(1) Offerors are registered and verified as eligible in the VIP database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB/VOSB and small business status based on the size standard corresponding to the NAICS code assigned to the solicitation/contract (see 819.7003(b) and (c)).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VIP-listed VOSB in response to a VOSB set-aside, the contracting officer may make an award to that concern. If the contracting officer decides not to make an award to the single acceptable offer received, or if the contracting officer receives no acceptable offers from eligible VOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs in accordance with 819.7005 or otherwise procured using the most appropriate strategy based on the results of market research.

819.7008 Sole source awards to verified service-disabled veteran-owned small businesses.

(a) A contracting officer may award a contract to a VIP-listed service-disabled veteran-owned small business (SDVOSB) using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The requirement is synopsized and the required justification pursuant to FAR 6.302–5(c)(2)(ii) is posted in accordance with FAR part 5;

(3) The SDVOSB has been determined to be a responsible contractor with respect to performance; and

(4) In the estimation of the contracting officer contract award can be made at a fair and reasonable price that offers best value to the Government.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of SDVOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one SDVOSB can meet the requirement is not required. However, in accordance with FAR 6.302–5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in 819.7003.

(e) A procurement requirement estimated to exceed the legislative threshold of $5 million shall not be split or subdivided to permit the use of this SDVOSB sole source authority.

819.7009 Sole source awards to verified veteran-owned small businesses.

(a) A contracting officer may award a contract to a VIP-listed veteran-owned small business (VOSB) using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The requirement is synopsized and the required justification pursuant to 6.302–5(c)(2)(ii) is posted in accordance with FAR part 5;

(3) The VOSB has been determined to be a responsible contractor with respect to performance;

(4) In the estimation of the contracting officer contract award can be made at a fair and reasonable price that offers best value to the Government; and

(5) No responsible SDVOSB has been identified.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of VOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one VOSB can meet the requirement is not required. However, in accordance with FAR 6.302–5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a VOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in 819.7003.

(e) A procurement requirement estimated to exceed the legislative threshold of $5 million shall not be split or subdivided to permit the use of this VOSB sole source authority.

819.7010 Tiered set-aside evaluation.

(a) Pursuant to the authority of 38 U.S.C. 8127 and under limited circumstances as set forth in this section, contracting officers may consider using a tiered set-aside evaluation approach to minimize delays in the re-solicitation process.

(b) Tiered evaluation of offers is a procedure that may be used in competitive negotiated acquisitions, including construction and acquisitions for commercial products and commercial services when the VA Rule of Two determination indicates a set-aside is required, but other circumstances preclude a confident conclusion that an award can be made at the SDVOSB or VOSB tier. The contracting officer—

(1) Solicits and receives offers from targeted tiers of small business groups, with SDVOSB as the first tier and VOSB as the second tier;

(2) Establishes a tiered order of priority for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

(c) Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the following types of tiers will be included in the solicitation:

(1) Tiered evaluations limited to SDVOSBs or VOSBs;

(2) Tiered evaluations including 8(a) and HUBZone small businesses; or

(3) Tiered evaluations including all other small business concerns.

(d) The tiered order of priority shall be consistent with 819.7005. Consideration shall be given to HUBZone and 8(a) small business concerns before evaluating offers from other small business concerns.

819.7011 Contract clauses.

(a) The contracting officer shall insert clause 852.219–73, VA Notice of Total Set-Aside for Verified Service-Disabled Veteran-Owned Small Businesses, or clause 852.219–74, VA Notice of Total Set-Aside for Verified Veteran-Owned Small Businesses, as applicable, in solicitations, orders and contracts that are set-aside, reserved, evaluated or awarded under this subpart. This includes sole source awards as well as multiple-award contracts when orders may be set aside for SDVOSBs/VOSBs as described in 808.405 and FAR 19.504(c)(1)(ii).

(b) The contracting officer shall insert the clause at 852.219–75, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction, in solicitations and contracts for services and construction, including BPAs, BOAs, and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs.

(c) The contracting officer shall insert the clause at 852.219–76, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products, in solicitations and contracts for supplies or products, including BPAs, BOAs, and orders, for acquisitions that are to be awarded on the basis of an SDVOSB/VOSB set-aside, sole source, or an evaluation preference under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs. The contracting officer shall appropriately tailor the clause as set forth in paragraph (a)(2)(iii) of this section.

Subpart 819.71—[Reserved]

PART 832—CONTRACT FINANCING

■ 10. The authority citation for part 832 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1303, 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 832.9 [Removed and Reserved]

■ 11. Remove and reserve subpart 832.9.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Revise the authority citation for part 852 to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 852.2—Text of Provisions and Clauses

852.207–70 [Removed and Reserved]

■ 13. Remove and reserve section 852.207–70.

■ 14. Add Section 852.208–70 to read as follows:

852.208–70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

As prescribed in 808.405–570, insert the following clause:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS—ORDERS OR BPAs (DATE)

(a) In an effort to increase contracting opportunities for Veterans, depending on the evaluation factors included in the solicitation, VA will evaluate responses received based on the schedule Contractor's VIP-verified service-disabled veteran-owned small business/veteran-owned small business (SDVOSB/VOSB) status; and/or their proposed use of VIP-listed SDVOSB/VOSB as subcontractors or teaming partners.

(b) To receive credit under this clause a contractor or subcontractor must be listed, at time of submission of offer/quotes and at time of award, as an eligible SDVOSB/VOSB in the Vendor Information Pages (VIP) database at *https://www.vetbiz.va.gov/vip/.*

(c) A VIP-listed SDVOSB schedule holder will receive full credit, and a VIP-listed VOSB schedule holder will receive partial credit for the SDVOSB/VOSB status evaluation factor.

(d) Offerors other than SDVOSBs or VOSBs proposing to use VIP-listed SDVOSBs/VOSBs as subcontractors/teaming partners, will receive some consideration under this evaluation factor. To receive consideration, offerors must provide in their proposals:

(1) The name(s) and contact information of the VIP-listed SDVOSB(s)/VOSB(s) with whom they intend to team or subcontract.

(2) A brief description of the proposed team or subcontractor(s) arrangement.

(3) The approximate dollar value of the proposed teaming arrangements or subcontract(s).

(4) Evidence of teaming partner/subcontractor's VIP database registration and verification.

(e) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

■ 15. Add section 852.208–71 to read as follows:

852.208–71 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders and BPAs.

As prescribed in 808.405–570, insert the following clause:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTOR COMMITMENTS—ORDERS AND BPAs (DATE)

(a) The Contractor agrees, if selected on the basis of service-disabled veteran-owned small business (SDVOSB) or veteran-owned small business (VOSB) status, to comply with the eligibility requirements in subpart 819.70, including the limitation on subcontracting requirements at 13 CFR 125.6.

(b) The Contractor agrees, if selected for award on the basis of teaming/subcontracting in accordance with 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders and BPAs, to use the evaluated firm(s) as proposed or if approved by contracting officer to substitute one or more VIP-verified SDVOSB/VOSB for work of the same or similar value.

(c) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

852.219–9 [Removed]

■ 16. Remove Section 852.219–9.

■ 17. Add section 852.219–70to read as follows:

852.219–70 VA Small Business Subcontracting Plan Minimum Requirements.

As prescribed in 819.708, insert the following clause:

VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DATE)

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to VA verified service-disabled veteran-owned small business and veteran-owned small business SDVOSB/VOSB shall be at least commensurate with the Department's annual SDVOSB/VOSB subcontracting goals.

(c) For a commercial plan, the minimum goals for award of subcontracts to SDVOSB/VOSB shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business subcontracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, SDVOSB/VOSBs must be verified as eligible in the VA's Vendor Information Pages (VIP) database at *https://www.vetbiz.va.gov/vip/.* A contractor may reasonably rely on a subcontractor's status as shown in the VIP database as of the date of subcontract award, provided the contractor retains records of the results of the VIP database query.

(e) The Contractor shall annually submit a listing of SDVOSB/VOSB (for which credit toward goal achievement is to be applied) for review by personnel in the Office of Small and Disadvantaged Business Utilization. Use VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business.

(f) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

■ 18. Revise section 852.219–71 to read as follows:

852.219–71 Notification of Competition Limited to Eligible 8(a) Participants.

As prescribed in 819.811–370, when FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Participants, is utilized, use this clause in conjunction with the FAR clause.

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) PARTICIPANTS (DATE)

Substitute paragraph (c) in FAR Clause 52.219–18 as follows:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the Prime Contractor. Contractor shall comply with the limitations on subcontracting as provided in 13 CFR 125.6 and other 8(a) program requirements, as set forth in 13 CFR part 124.

(End of clause)

■ 19. Revise section 852.219–72 to read as follows:

852.219–72 Notification of Section 8(a) Direct Award.

As prescribed in 819.811–370, paragraph (a), insert the following clause:

NOTIFICATION OF SECTION 8(a) DIRECT AWARD (DATE)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program. By submission of its offer, the Offeror represents that it is in good standing and that it meets all of the criteria for participation in the program in accordance with 13 CFR part 124.

(b) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the Prime Contractor.

(c) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Partnership Agreement (PA) between the Small Business Administration (SBA) and the Department of Veterans Affairs.

(d) SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) Contractor under the 8(a) program. The cognizant SBA district office is:

[*To be completed by the Contracting Officer at the time of award*]

(e) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall obtain SBA's approval prior to processing any novation agreement(s). The contracting activity may assign contract administration functions to a contract administration office.

(f) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern.

(2) Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(3) It will adhere to the requirements of 52.219–14, Limitations of Subcontracting and other requirements in 13 CFR part 124 and 13 CFR 125.6, as applicable

(g) Any proposed joint venture involving an 8(a) Participant must be approved by SBA before contracts are awarded.

(End of clause)

852.219–10 [Removed]

■ 20. Remove section 852.219–10.

■ 21. Add section 852.219–73 to read as follows:

852.219–73 VA Notice of Total Set-Aside for Verified Service-Disabled Veteran-Owned Small Businesses.

As prescribed in 819.7011, insert the following clause:

VA NOTICE OF TOTAL SET-ASIDE FOR VERIFIED SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESSES (DATE)

(a) *Definition.* For the Department of Veterans Affairs, ''*Service-disabled Veteran-owned small business concern or SDVOSB*'':

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled Veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled Veterans or eligible surviving spouses (see VAAR 802.201, Surviving Spouse definition);

(ii) The management and daily business operations of which are

controlled by one or more service-disabled Veterans (or eligible surviving spouses) or, in the case of a service-disabled Veteran with permanent and severe disability, the spouse or permanent caregiver of such Veteran;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR part 74 and is listed in VA's Vendor Information Pages (VIP) database at *https://www.vetbiz.va.gov/vip/;* and

(v) The business will comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, provided that any reference therein to a service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to apply to a VA verified and VIP-listed SDVOSB, unless otherwise stated in this clause.

(2) The term ''Service-disabled Veteran'' means a Veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(3) The term ''small business concern'' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term ''small business concern owned and controlled by Veterans with service-connected disabilities'' has the meaning given the term ''*small business concern owned and controlled by service-disabled veterans*'' under section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)), except that for a VA contract the firm must be listed in the VIP database (see paragraph (a)(1)(iv) above).

(b) *General.* (1) Offers are solicited only from VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed SDVOSBs at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made to a VIP-listed SDVOSB who is eligible at the time of submission of offer(s) and at the time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as an SDVOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only VIP-listed SDVOSBs are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible SDVOSB as defined in this clause, 38 CFR part 74, and VAAR subpart 819.70.

(d) *Agreement.* When awarded a contract action, including orders under multiple-award contracts, an SDVOSB agrees that in the performance of the contract, the SDVOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406(b) and 13 CFR 125.6. Unless otherwise stated in this clause, a requirement in 13 CFR part 121 and 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed SDVOSB. For the purpose of limitations on subcontracting, only VIP-listed SDVOSBs (including independent contractors) shall be considered eligible and/or ''similarly situated'' (*i.e.,* a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to comply with the required certification requirements in this solicitation (see 852.219–75 or 852.219–76 as applicable). These requirements are summarized as follows:

(1) *Services.* In the case of a contract for services (except construction), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not VIP-listed SDVOSBs (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract

(2) *Supplies/products.* (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed SDVOSBs. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the SDVOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CRF 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

(3) *General construction.* In the case of a contract for general construction, the SDVOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed SDVOSBs.

(4) *Special trade construction contractors.* In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not VIP-listed SDVOSBs.

(5) *Subcontracting.* An SDVOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* An SDVOSB shall comply with the limitations on subcontracting as follows:

[*Contracting Officer check as appropriate.*]

__ By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

__ By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as an SDVOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any requirement therein that applies to an SDVO SBC is to be construed to apply to a VIP-listed SDVOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence.* The VA Veterans First Contracting Program, as defined in VAAR 802.101, subpart 819.70 and this clause, takes precedence over any inconsistencies between the requirements of the SBA Program for SDVO SBCs, and the VA Veterans First Contracting Program.

(h) *Misrepresentation.* Pursuant to 38 U.S.C. 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406–2 Causes for Debarment).

(End of clause)

852.219–11 [Removed]

■ 22. Remove section 852.219–11.

■ 23. Add section 852.219–74 to read as follows:

852.219–74 VA Notice of Total Set-Aside for Verified Veteran-Owned Small Businesses.

As prescribed in 819.7011, insert the following clause:

VA NOTICE OF TOTAL SET-ASIDE FOR VERIFIED VETERAN-OWNED SMALL BUSINESSES (DATE)

(a) *Definition.* For the Department of Veterans Affairs, ''*Veteran-owned small business or VOSB*'':

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more Veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more Veteran(s);

(ii) The management and daily business operations of which are controlled by one or more Veteran(s);

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR part 74 and is listed in VA's Vendor Information Pages (VIP) database at: *https://www.vetbiz.va.gov/vip/;* and

(v) The business will comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, provided that any requirement therein that applies to a service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to also apply to a VA verified and VIP-listed VOSB, unless otherwise stated in this clause.

(vi) The term VOSB includes VIP-listed service-disabled veteran-owned small businesses (SDVOSB).

(2) ''*Veteran*'' is defined in 38 U.S.C. 101(2).

(3) The term ''*small business concern*'' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term ''*small business concern owned and controlled by Veterans*'' has the meaning given that term under section 3(q)(3) of the Small Business Act (15 U.S.C. 632(q)(3)), except that for a VA contract the firm must be listed in the VIP database (see paragraph (a)(1)(iv) of this clause).

(b) *General.* (1) Offers are solicited only from VIP-listed VOSBs, including VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made only to a VIP-listed VOSB who is eligible at the time of submission of offer(s) and at time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as a VOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only VIP-listed VOSBs are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible VOSB as defined in this clause, 38 CFR part 74, and VAAR subpart 819.70.

(d) *Agreement.* When awarded a contract action, including orders under multiple-award contracts, a VOSB agrees that in the performance of the contract, the VOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on-subcontracting requirements in 13 CFR 121.406(b) and 125.6. Unless otherwise stated in this clause, any requirement in 13 CFR part 121 and part 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed VOSB. For the purpose of the limitations on subcontracting, only VIP-listed VOSB, (including independent contractors) is considered eligible and/or ''similarly situated'' (*i.e.,* a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to comply with the required certification requirements in this solicitation (see 852.219–75 and/or 852.219–76 as applicable). These requirements are summarized as follows:

(1) *Services.* In the case of a contract for services (except construction), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not VIP-listed VOSBs (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(2) *Supplies/products.* (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed VOSBs. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the VOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

(3) *General construction.* In the case of a contract for general construction, the VOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed VOSBs.

(4) *Special trade construction contractors.* In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not VIP-listed VOSBs.

(5) *Subcontracting.* A VOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed VOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction

contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* A VOSB shall comply with the limitations on subcontracting as follows:

[*Contracting Officer check as appropriate.*]

__ By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

__ By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as a VOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any requirement therein that applies to an SDVO SBC is to be construed to also apply to a VIP-listed VOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence.* The VA Veterans First Contracting Program, as defined in VAAR 802.10, subpart 819.70 and this clause, takes precedence over any inconsistencies between the requirements of the SBA Program for SDVO SBCs and the VA Veterans First Contracting Program.

(h) *Misrepresentation.* Pursuant to 38 U.S.C. 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's VOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406–2 Causes for Debarment).

(End of clause)

■ 24. Add section 852.219–75 to read as follows:

852.219–75 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.

As prescribed in 819.7011(b), insert the following clause:

VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (DATE)

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Contracting Officer check the appropriate box below based on the predominant NAICS code assigned to the instant acquisition as set forth in FAR 19.102.*]

(i) □ *Services.* In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(ii) □ *General construction.* In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(iii) □ *Special trade construction contractors.* In the case of a contract for special trade contractors, the contractor will not pay more than 75% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(2) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(3) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance with the limitations on subcontracting requirement. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification

I hereby certify that if awarded the contract, [*insert name of offeror*] will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of [*insert name of offeror*].

Printed Name of Signee:

_____

Printed Title of Signee:

Signature:

Date:

Company Name and Address:

(End of clause)

■ 25. Add section 852.219–76 to read as follows:

852.219–76 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.

As prescribed in 819.7011(c), insert the following clause. The contracting officer shall tailor the clause in paragraph (a)(2)(iii) as appropriate:

VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (DATE)

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Offeror check the appropriate box*]

(i) ☐ In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(ii) ☐ In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) is granted. The offeror understands that, as provided in 13 CFR 121.406(b)(7), such a waiver has no effect on requirements external to the Small Business Act, such as the Buy American Act or the Trade Agreements Act.

(2) Manufacturer or nonmanufacturer representation and certification. [*Offeror fill-in—check each applicable box below. The offeror must select the applicable provision below, identifying itself as either a manufacturer or nonmanufacturer*]:

(i) ☐ *Manufacturer or producer.* The offeror certifies that it is the manufacturer or producer of the end item being procured, and the end item is manufactured or produced in the United States, in accordance with paragraph (a)(1)(i).

(ii) ☐ *Nonmanufacturer.* The offeror certifies that it qualifies as a nonmanufacturer in accordance with the requirements of 13 CFR 121.406(b) and paragraph (a)(1)(ii). The offeror further certifies it meets each element below as required in order to qualify as a nonmanufacturer. [*Offeror fill-in—check each box below.*]

☐ The offeror certifies that it does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS code 541519, which is found at 13 CFR 121.201, footnote 18).

☐ The offeror certifies that it is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied.

☐ The offeror certifies that it will take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(iii) ☐ The offeror certifies that it will supply the end item of a small business manufacturer, processor, or producer made in the United States, unless a waiver as provided in 13 CFR 121.406(b)(5) has been issued by SBA. [*Contracting Officer fill-in or removal (see 13 CFR 121.1205). This requirement must be included for a single end item. However, if SBA has issued an applicable waiver of the nonmanufacturer rule for the end item, this requirement must be removed in the final solicitation or contract.*]

or [*Contracting officer tailor clause to remove one or other block under subparagraph (iii).*]

☐ If this is a multiple item acquisition, the offeror certifies that at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns. [*Contracting Officer fill-in or removal. See 13 CFR 121.406(d) for multiple end items. If SBA has issued an applicable nonmanufacturer rule waiver, this requirement must be removed in the final solicitation or contract.*]

(3) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(4) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract or to determine whether the offeror qualifies as a manufacturer or nonmanufacturer in compliance with the limitations on subcontracting requirement. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification

I hereby certify that if awarded the contract, [*insert name of offeror*] will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute

this certification on behalf of [*insert name of offeror*].

Printed Name of Signee:

Printed Title of Signee:

Signature:

Date:

Company Name and Address:

(End of clause)

PART 853—FORMS

■ 26. Revise the authority citation for part 853 to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 853.2—Prescription of Forms

■ 27. Add section 853.219 to read as follows:

853.219 Small business forms.

(a) *VA Form 2268, Small Business Program and Contract Bundling Review.* VA Form 2268 is prescribed for use to document actions and recommendations related to small business, as specified in 819.202.

(b) *VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Businesses.* VA Form 0896A is prescribed for use to submit subcontracting information, as specified in 819.704–70.

(c) Forms are available at: *https://www.va.gov/vaforms.*

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